*THE HON'BLE SRI JUSTICE P.S. NARAYANA

+WRIT PETITION Nos. 490 of 2000, 6874, 9486 & 9498 of 2001, 21788 of 2002, 5756 of 2004 and 14077, 14030 & 13746 of 2006

% Dated 20-09-2006

Progressive Constructions Co. … Petitioner in W.P.No.490/00

M/s. Madhucon Projects Ltd. … Petitioner in W.P.No.6874/01

M/s. Naveen Stone Crushers. … Petitioner in W.P.No.9486/01

K.Srinivasa Rao --- Petitioner in W.P.No.9498/01

M/s. Siddardha Constructions (P) Ltd. … Petitioner in W.P.No.21788/02

Robho Sillicon Private Ltd. … Petitioner in W.P.No.5756/04

M/s.Rock Sand Minerals … Petitioner in W.P.No.14077/06

Rank Silicon Private Limited. … Petitioner in W.P.No.14030/06

M/s. Jyothi Constructions. … Petitioner in W.P.No.13746/06

AND

$ The South Central Railway and others

… Respondents in all the Writ Petitions

! Counsel for Petitioners : Smt. Shoba.

^Counsel for Respondents : 1. Sri Panduranga Reddy, G.P. for Industries & Commerce.
2. Sri Gourishankar Sanghi, Standing Counsel for railways.

<GIST:

> HEAD NOTE:

? Cases referred

1. (1998) 6 SCC 476
2. AIR 1995 SC 858
3. 1996 (1) ALD 198 (D.B.)
4. (2004) 6 SCC 281

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Between:

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COMMON ORDER:

This batch of writ petitions is being disposed of by a common order since substantial question involved in all these writ petitions being the same. In certain of these writ petitions, there are interim orders and in certain of these writ petitions, no interim orders are made. Learned Government Pleader for Industries and Commerce had opposed the passing of an interim order on the ground that there is a change of situation by virtue of G.O.Ms.No.217, dated 29.09.2004.

2. The learned Counsel representing the petitioners would submit that in the nature of the reliefs prayed for, it would not alter the situation in any way and even otherwise subsequent to the said G.O. in certain writ petitions interim orders have been made. Inasmuch as, counter-affidavits are filed, this Court thought it fit to dispose of all these matters finally.

3. Submissions at length were made by Smt. Shoba, learned Counsel representing the petitioners, Sri Panduranga Reddy, learned Government Pleader for Industries and Commerce and Sri Gourishankar Sanghi, Standing Counsel for Railways.

4. Learned Counsel representing the petitioners had taken this Court through the pleadings of the parties and would contend that certain arithmetical calculations and the details specified in the expert committee report, the petitioners are not aware of and they were never put on notice. Learned Counsel also had drawn the attention of this Court to Sections 9, 13 and 15 of the Mines and Minerals (Development and Regulation) Act 1957, hereinafter in short referred to as Act for the purpose of convenience. Learned Counsel also had drawn the attention of this Court to Rule 64 (b) of the Mineral Concession Rules, 1960 and also to Schedules I and II under Rule 10 as substituted by G.O.Ms.No.217, I&C (M-1) Department, dated 29.09.2004 of A.P. Minor Mineral Concession Rules 1966 in short hereinafter referred to as Rules for the purpose of convenience, and would maintain that absolutely the petitioners have no objection if the respondents follow Rule 10 of the Rules specified supra read along with Schedules I and II. Certain submissions were made by the learned Counsel in relation to the Technical Study Report. The Counsel also had further explained that even in relation to the Technical Study Report none of the petitioners were put on notice. Learned Counsel would also had drawn the attention of this Court to Rule 34 of the Rules and also placed reliance on certain decisions to substantiate her contentions. Learned Counsel also contended that if the unit is elsewhere, the Government had no right to make any claim at all.

5. Per contra, Sri Panduranga Reddy, learned Counsel representing the respondents had distinguished the decisions and would maintain that the issue of dispatch permits and the variations being a new issue, it cannot be said that any of the decisions cited by the learned Counsel for the petitioners would be applicable to the facts of these cases. Learned Counsel had explained the Technical Study Report on Volumetric and Tonnage Variation due to crushing of stones and boulders by department of Mines and Geology, Government of A.P., Hyderabad, several mathematical and arithmetical calculations and how the leaseholders are making attempts to evade the payments due to the

Government. Learned Counsel also had well explained Rule 10 of the Rules and Scheduled I and II thereunder as amended and Rules 26 and 28 of the Rules as well and would conclude that the writ petitions are liable to be dismissed.

6. Sri Gourishankar Sanghi, learned Counsel representing the Railways in one of the matters had clarified the position by explaining the stand of the railways in this regard.

Heard the Counsel.

W.P.No.490 of 2000

7. Progressive Constructions Company, the writ petitioner, filed this writ petition praying for a Mandamus directing the respondents to assess the quantities of ballast by applying conversion factor which is followed by other railways including the South Eastern Railways and not to insist on volumetric method and pass such suitable orders.

8. In this matter Rule Nisi was issued on 20.01.2000 and in WPMP.No.631 of 2000 interim stay was granted and notice was ordered. In WVMP.No.1909 of 2003 the interim order was made absolute on 27.10.2003 with a direction to expedite hearing by fixing a date.

9. It is stated that the petitioner – Firm is one of the contractors of supply of ballast to the South Central Railway and with a view to supply the material, the petitioner firm had obtained a quarry lease for stone and metal over an extent of 2 hectors in Sy.Nos. 217 and 271 of Vattinagulapalli, Rajendranagar Mandal, R.R. District for a period of 10 years. Necessary quarry lease deed had also been executed between the petitioner and the State Government of Andhra Pradesh. Since then, the work order was given on 17.06.1998 by the Assistant Director of Mines and Geology, Hyderabad.

10. It is further stated that the petitioner was given a contract by the South Central Railway to supply 1,05,000/- cum. of ballast. So far the petitioner had supplied 23,384 cum. of ballast to the respondents. The petitioner had obtained permits for the transport of the ballast from the 5th respondent herein and he had paid seigniorage fee on 23,206 cum. If the conversion factor is applied, the quantity of ballast will be 42,192 cum. That's why the petitioner prays that the respondents should assess the quantity of ballast by applying "Conversion factor" which is being done by the South Eastern Railway. The respondents cannot measure supplied quantity of ballast on "Volumetric Method". It is further stated that it is held by this Court that, 'Seigniorage fee is payable only on the excavated and dispatched mineral'. The Hon'ble Supreme Court also held in the decision reported in *STATE OF ORISSA & OTHERS vs STEEL AUTHORITY INDIA LIMITED* (AIR 1998 SC 3052) that 'the levy of royalty is in respect of the mineral removed

or consumed by the contractor from the leased area'. It is further stated that Ballast is manufactured from stones obtained from quarries leased out by the Mines Department of Government of A.P. The raw material or stones are taken from the quarries to the crusher for crushing and by crushing the big stones they were converted into small stones of 50 mm size, which are used on the Railway tracks as ballast.

11. At para 7 Rules 10 and 34 of the APMMC Rules 1966, hereinafter in short referred as Rules 1966, were referred to.

12. It is further stated that the ballast made from the raw stones, when measured on volumetric basis measures more in volume on account of the bulkage resulting from the 'Voids', which is inherent in the very nature of things as they are. This fact is also supported by P. N. Khanna's India Practical Civil engineering Handbook. It is also relevant to note that this procedure is also followed by the South Eastern Railway. Even the recent test report on conversion of big stones into ballast given by Chitanya Bharati Institute of Technology, Hyderabad, supports the view that 'the ballast made from the raw stones, when measured on volumetric basis measures more in volume'. It is further stated that according to proven physical laws, there is a large variation between the quantity of material actually removed from the quarry in the shape of big stones (for which seigniorage fee has to be paid under the APMMC Rules, 1966 as mentioned above) and the quantity of ballast in the shape of small pieces supplied to the Railways. This variation is due to the fact that a large piece of stone measuring 1 cum. of volume, when converted into small stones either by breaking or crushing and heaped would measure 1.818 or 1.82 cum. The resultant higher volume is due to the 'voids' that develop in between the heaped up small stones. When the heaps of ballast are measured according to the standard methods those 'voids' are also taken into account. These are built into the heaps or stacks. The inflate volume here is an illusion, but that is mixed with reality.

13. It is further stated that from the above proposition it is seen that the volume of large stone measuring 1 cum when converted into small stones and stacked would measure about 1.818 or 1.82 cum. due to 'voids' occurring between the small stones. Now, if the monolithic stone of 1 cum. volume is weighed and compared with the weight of the total quantity of the small stones manufactured from this i.e. 1.818 or 1.82 cum., both would be identical. In other words, the inflationary content in the volume of stacked stones can be established by weighment method since 'voids' would not weight. It is further stated that the above stated 'conversion factor' was brought to the notice of the respondents and the petitioner informed them that the demand made by them for payment of seigniorage fee on the basis of 'volume' of the finished product i.e. ballast is not tenable under the

circumstances stated above. He also brought to their notice that a precedent in this regard is existing on the South Eastern Railways. There at huge quantity of ballast and metal were supplied by a contractor earlier for the construction of new railway line between Koraput and Raigada stations of South Eastern Railways. The question of assessing the quantity of stone for payment of seigniorage fee to the Government of Orissa had arisen then. For this purpose, the Chief Engineer (Con.) South Eastern Railway, Laxmipur (Orissa) who was incharge of the work, fixed the conversion factors based on unit weight of stone and issued a Circular No.CE(C)/ LXP/11/R/1518, dt.27/28.11.90. The Contractor who executed ballast supply works on South Eastern Railway had paid the Seigniorage fee, which had been accepted without any demur by the Railway authorities and Government of Orissa.

14. It is further stated that the petitioner brought all the above facts to the notice of the 2nd respondent and requested him for applying the 'conversion' factor for assessment of quantity of ballast supplied to the Railways, and also requested him not to make recovery of any amount from the bills payable to him. The petitioner had submitted the vouchers showing details of seigniorage charges paid to the Mines and Geology Department for quantities of raw material removed from the quarries. The petitioner had submitted proof of payment of seigniorage charges for a quantity of raw material and that the respondents are bound to calculate the royalty charges payable by him on the 'conversion factor' which was accepted by the South eastern Railways and pass the bills till the quantity reaches. Thereafter, the petitioner will submit fresh vouchers in proof of further payment to cover further quantities of supply. It is further stated that there is a Special Condition No.8(a) of the Contract entered with the respondents by the petitioner by which the Railway reserved the right to recover royalty charges from the on accounts bills if the contractor does not submit proof of payment. The above clause is only to ensure correct payment of seigniorage charges to the State Government. But, the seigniorage charges actually due to the State Government have been paid as per Rule 10 of the Rules, 1966 and the various decisions of this Court and Supreme Court.

15. The Assistant Director, Mines and Geology, filed WVMP.No.1909 of 2003 wherein in the counter-affidavit it is averred that the petitioner was granted a quarry lease of stone and metal over an extent of 2 hectors in Sy.Nos.217 and 271 of Vattinagulapalli village, Ranga Reddy district for a period of 10 years. According to Rules, 1966 the quarry lease holders for stone and metal are permitted to undertake the processing of stone boulders into road metal/ballast by manual operations and transport the rough stone boulders to the crushing unit and undertake the process of crushing the granite boulders into various sizes by mechanical process and supply to the consumers. In the first method, the rough stone is subjected to manual processing into road metal/ballast and the finished product

is dispatched from quarry site. Therefore, the levy of seigniorage fee is decided on the finished goods dispatched from quarry site, under Rule 10(1) of Rules, 1966. In the second method, the rough stone is dispatched from the quarry site in lump form (as boulders only) and subjected to mechanical crushing to derive various sizes of metal as 60 MM, 50 MM, 40 MM, 30 MM, 20 MM, 12 MM and
6.7 MM. Therefore, the seigniorage fee paid for one Qubic Metre of Stone and metal yields 20% of 50 MM and 60% are other sizes of metal produced in the mechanical crushing leaving 20 to 25% its processing waste in air. Therefore 0.2 Cub. Metre of 50 MM Ballast is only derived from 1 Cub. Mt. of stone and metal and the quantity covered by payment of seigniorage fee is only 0.20 Cubic Metre. Therefore the imposition of seigniorage fee is not based on the 'Volumetric measurement' of Ballast supplied, but on the finished product derived from mechanical conversion of Stone and Metal dispatched and utilized in the process. Further 'Ballast' supplied by the petitioner is one of the finished products yielded in Mechanical crushing of stone and metal in a crushing unit and it is not existing freely in the quarry leased area as raw material useful for supply as 'Railway Ballast'. Hence the volumetric measurement of Ballast for determination of the raw material utilized for deriving the finished product and imposition of seigniorage fee on the proportionate quantities is not disputed by any authority. Therefore allowing the air voids in volumetric measuring of Ballast produced in crushing and applying the conversion factor for deciding the raw material required is a settled law and there is no irregularity. W.P.No.17417/99 (but not W.P.No.17917/99) is filed questioning the demand notice issued by the Deputy Director of Mines & Geology, Hyderabad and the said writ petition is disposed of by an order dated 13.11.2001 directing the petitioner therein to file appeal.

16. It is also further stated that the petitioner is having a valid quarry lease for stone and metal over an extent of 2 hectors in Sy.Nos.217 and 271 of Vattinagulapalli, Ranga Reddy District for 10 years with effect from 17.06.1998 and that the petitioner is permitted to dispatch a rough stone boulders to the existing unit after payment of seigniorage fee in advance and accordingly the petitioner obtained a valid dispatch permit under Rules.

17. It is also stated that the petitioner was permitted to dispatch from the quarry site a quantity of 23.286 Cubic Metres of Stone & Metal to be crushed in the "Crushing Unit". As per the established norms the products derived in the crushing unit are 20% 50 MM Ballast and 60% other size metal products such as 20 MM, 12 MM and 6.7 MM. The petitioner is supplying 50 MM metal only to Railway Department and other products are being sold to local consumers. This is evident by the invoices available with the lessee in support of the sale of by-products other than 50 MM. By applying the conversion factor in between the raw material utilized for manufacturing of 50 MM metal is only I:02 Cubic

Metres. Therefore the lease holder can produce 50 MM metal in his crusher by dispatching 23,386 Cubic metres from the quarry site is only 4676 cubic metre. Therefore, as per the petitioner's contention that he had supplied 23,384 Cubic Metres of Ballast by utilizing 23,286 Cubic Metre of Stone & Metal in his crushing unit is totally incorrect and false. He had extracted more material without payment of seigniorage fee and derived 23,384 Cubic Metres illegally in violation of Rules, 1966 and supplied the same to the Railway Department. Further, the contention of the petitioner that by applying the conversion factor the quantity of Ballast will be 42,192 Cubic Metres is lacking the support and evidence since the material supplied by the petitioner is a product mechanically derived from crushing the stone boulders. The products derived in the crushing is not only 50 MM metal, but also 20 MM, 12 MM, & 6.7 MM Metal. The petitioner totally ignored the other products derived in the process and tried to misrepresent the facts before this Court with a determined bid to derive personal gain by drawing attention wrongly to volumetric method. The metal supplied was not available in the quarry in free state and the petitioner is not having any valid permit for dispatch of 50 MM Metal from the quarry site for considering the volumetric conversion factor. Further, the fact that the granite used as Stone & Metal for producing Road Metal, building Stone & Rough Stone exists as small boulders. The granite existing in large quantities and amenable to be recovered as dimensional stones attracts higher seigniorage fee as per Granite Conservation Rules, 1999. The seigniorage fee leviable on small granite boulders useful as Stone & Metal is Rs.33 per Cubic Metre and the compact form is applicable for recovery as granite in 1 Cubic Metre attracts the Granite Conservation Rules, and attracts the imposition of seigniorage fee Rs.1,000/- to 1,500/- per 1 Cubic meter depending on the colour component. Therefore, the petitioner's contentions are totally irrelevant, improper and against the existence of raw material in nature.

18. It is further stated at para 6 of the counter-affidavit that as per Rule 10(1) of Rules, 1966 the seigniorage fee is leviable on the quantities of Stone & Metal dispatched from the quarry site to the crusher. After processing the Stone & Metal in the crusher, the products derived in the process are 60 MM, 50 MM, 40 MM, 20 MM, 12 MM and 6.7 MM and the products depend on the hardness of the stone available in the quarry. Therefore, the contention of the petitioner to assess his supplies considering that he had supplied 50 MM Railway ballast of 1.82 Cubic metre by utilizing 1 cubic metre of stone & Metal is totally incorrect and it is an attempt to disregard the basic concept about the resultant yields in the process of stone and metal by mechanical crushing. The conducive and conjugate laws forbid for application of irrelevant factors for deriving the estimated quantities derived in industrial process in mining industry. Therefore, the quantities of Ballast produced including air voids by utilizing rough stone boulders and physical measurement of Ballast by volumetric basis and deciding the volume of stone and metal

taking into consideration voids and other factors exist on similar factors. The imposition of seigniorage fee on stone and metal depends on small boulders extracted from quarry lease as per Rules, 1966 is Rs.33/- per cubic metre. If the same stone is existing in prescribed dimension and compact form of 1 cubic metre and above, the seigniorage fee leviable attracts the Conservation of Granite Rules 1999 is Rs.1,000/- or Rs.1,500/- per cubic metre depending on colour. Therefore the existence of granite in compact form or in small boulders is considered and differentiated while imposition of seigniorage fee. Therefore, the physical measurement quantities applicable to a natural product existing in the nature and the product derived by breaking boulders and produced along with other 60 MM, 40 MM, 20 MM, 12 MM and 6.7 MM cannot be equated and made applicable. The hardness of the stone boulders, the sharpness and breaking capacity of jaw crushers used in crushing unit are the prime factors for determination of the yield. The total industrial by-products are to be assessed while assessing the quantities utilized for producing a particular size of metal and depending on this factor the imposition of seigniorage fee depends and no other procedure is prescribed in the Rules, 1966. The total quantity of 1 Cubic metre rough stone in the form of small boulders does not yield only 50 MM metal during crushing process. The ratio in between the raw material and production of 50 MM metal is 5:l. Therefore, the conversion factor of the raw material required for drawing 1 cubic metre of 50 MM metal had to be worked out and assessed accordingly. The air voids existing in the 50 MM are also included to determine the yield. Therefore, introduction of weight-age factor to avoid the existing voids in the heaps is against the Rules, 1966 as stipulated by Government of Andhra Pradesh by exercising rule making power under Section 15(1A)(g) of the Act 1957.

19. It was also stated at para 7 of the counter-affidavit that the Regulation of Minor Minerals in A.P. is regulated by Rules, 1966 formulated under Section 15 of the Act, 1957. The Rules framed by Government of Orissa on Minor Minerals cannot be made applicable in Andhra Pradesh and they are to be regulated as per Rules, 1966 and the imposition of seigniorage fee depends on the rules that are in force on the day of consideration. The adequate provisions to assess the seigniorage fee considering the stocks in tons is not existing in the rules. Therefore, the request of the petitioner to follow the rules formulated by Orissa Government in case of supplies made from Andhra Pradesh is not acceptable and there are no provisions in Rules, 1966 to this effect.

20. It was further stated that the Government of A.P. stipulated the condition to State Government Departments and Central Government Departments to recover single time seigniorage fee on the minor minerals consumed while executing the local works by the contractors. The orders of Government of A.P. do not find any alternative to examine the contentions of the petitioner on the ground of volumetric method. Hence, the imposition

of seigniorage fee on the quantities consumed by the contractors is subjected for assessment of seigniorage fee due on the material utilized in the works. Hence, the stand taken by petitioner is untenable.

21. In the counter-affidavit filed by respondents 1 to 4, it was averred at paras 3 to 10 as hereunder:

> "The petitioner had agreed to supply 105000 m3 of stone ballast crushed and loaded into railway wagons by Agreement No.GM/W/SE/98/1, dated 18.5.1998 within completion period of 42 months and annual supply rate of 35000 m3 per year. Pursuant to Clause A of the Special Conditions of Contract the petitioner had to pay royalty charges to the State Government in connection with supply of stone ballast and submit a receipt/ clearance certificate certifying that royalty charges have been paid by the petitioner. The royalty charges have to be paid are as per the rates fixed by the State Government applicable to that particular area. A rate of Rs.25/- has to be paid by the petitioner. The petitioner had disputed the method of calculation of volume stating that the rate is applicable for m3 stone at quarry and not the finished product which increases in volume due to presence of voids. The conversion factor from block quantity at quarry to the finished stone ballast has to be decided by the Mines Department – Respondent 5 herein. It is not for the railways to decide upon the method of calculation of the royalty rate payable by the petitioner. Respondents 1 to4 have to ensure that the petitioner has to workout the details of the royalty rate in consultation with 5th respondent.
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> As per the agreement executed by the petitioner in favour of the Railways – 1st respondent to supply the machine crushed stone ballast and pay the royalty to the State Government and obtain a certificate to be furnished to the State Government and obtain a certificate to be furnished to the railways of having paid the royalty. As per the orders of the State Government, payment for the supply of stone ballast will be released only after the production of MRCC certificate from the Mines Department of the State Government.
>
> The Rules relating to the method of fixation of royalty is within the purview of Mines Department of the Government of Andhra Pradesh whether it is the conversion factor or volumetric factor has to be applied. It is a fact that voids in the stone ballast of 500 mm size when stacked, will measure more than the boulders excavated from the quarry. But the Mining Department alone has to decide finally the amount of royalty.
>
> The petitioner's averment that when one m3 stone is cut into small pieces it would 1.82 m3 is to be confirmed by reputed engineering laboratories test results and accepted by State Government Mining Department. The volume of the stone produced 50 mm size out of a rock of l m3 is to be standardized by the Mining Department who are the in-charge of collection of royalty.
>
> The railways are in no way concerned about the amount of royalty that is charged by the Mining Department. It is the petitioner's lookout and responsibility to satisfy the State Government and pay the royalty as demanded by them.
>
> The railways can recover the royalty from the on-account bills payable to the petitioner in the event of the petitioner not producing the certificate of having paid the royalty as per the Clause 8 of the agreement. As per the said Clause 8, the petitioner (contractor) will be required to obtain a final royalty clearance certificate from the concerned State Authority and produce the same to the Senior Divisional Engineer after completion of the supply but before the release of the final bill. If in any case the petitioner fails to produce the clearance certificate for royalty charges, final bills will be passed after retaining an amount equal to the amount of unpaid royalty charges.
>
> It is further stipulated in clause 8 of the agreement that the railways in consultation with respective State Governments will confirm the percentage of the royalty charges to be recovered for supply of mining minerals. The railway administration is entitled to deduct from the contractor's bills and keep in deposits

such amount equal to proportionate royalty charges from each on account bills and the same will be released as and when the contractor submits a clearance certificate certifying that the royalty charges have been paid by the contractor relating to the contract.

In the present writ petition the Hon'ble High Court passed interim orders of stay directing the respondents not to recover any charges towards seigniorage fee from the on-account bills of the petitioner pending disposal of the writ petition on 20.01.2000 in WPMP.No.631 of 2000. In view of the clause 8 of the Agreement, the railways are entitled to deduct the royalty charges from the on-account bills of the petitioner."

Hence, it was prayed that the writ petition be dismissed.

WP.No.6874 of 2001

22. M/s. Madhucon Projects Limited, the writ petitioner, filed the present writ petition praying for a Mandamus declaring the action of the respondents in demanding payment of seignoerage fee on the quantity of road metal supplied instead of the seignoerage fee prescribed as per Rule 10 of the A.P.M.M.C. Rules, 1966 as arbitrary, illegal and unconstitutional and consequently direct the respondents to assess and collect seignoerage fee on the excavated and dispatched boulders as per Rule 10 of A.P.M.M.C. Rules 1966 and pass such suitable orders.

23. The facts pleaded in the affidavit filed in support of the writ petition are as hereunder:

24. It is stated that the petitioner in a joint venture had been awarded the contract of widening four lane highway between Vijayawada – Eluru national highway N.H.5 projects under the agreement NHAI/ADB/III/CC-5 of 1997-98 by National Highways Authority of India (NHAI), New Delhi. This project is funded by Asian Development Bank (ADB) and is coming under Prime Minister Golden Quadrilateral Programme. At present the work is under progress as per the schedule and as per the specifications of NHAI. In order to execute the National Highway – NH.5 project, various minor mineral viz., sand, earth and road metal of different sizes are required and for supply of required minor mineral road metal, the petitioner was granted quarry leases.

25. Quarry lease for road metal for a period of 15 years in Un-surveyed block of Kadimipathavarm village, G.Konduru Mandal, Krishna District in over an extent of 1.214 hectors vide proceedings of Deputy Director of Mines and Geology, Kakinada in Proc.No.1380/03/98, dated 27.04.98, lease deed was executed on 11.05.1998 and sanction was accorded by Assistant Director of Mines and Geology in Proc.No.380/Q/98, dated 11.05.98 from 11.05.1998 to 10.05.2013.

26. Quarry lease for road metal for a period of 10 years in un-surveyed block of Kadimipothavaram village, G.Konduru Mandal, Krishna District in over an extent of 3.237

hectors vide proceedings of Deputy Director of Mines and Geology, Kakinada in Proc.No.1100/98, dated 07.03.1998, lease deed was executed on 21.03.198 and sanction was accorded in proceedings No.110//98, dated 21.03.1998 for the period from 21.03.1998 to 20.03.2008. Since then the petitioner had been working the quarries taking boulders from the quarries on payment of seigniorage fee. Boulders are sent to the company's own crushing plant for making road metal of different sizes (40 MM, 20 MM, 12 MM & 6.7 MM) and the crushed material is used in executing the national highway work.

27. It is also stated that the road metal manufactured stones are obtained from the quarries of Andhra Pradesh. The raw material or stones are taken from the quarries to crusher for crushing the big boulders brought from the quarries into small stones of 40 MM, 20 MM, 12 MM & 6.7 MM sizes, which are used in executing the work.

28. It is also stated that under Rule 10 of the APMMC Rules, 1966, seignoerage fee has to be paid for the minerals extracted and boulders from the quarry and transports the same to its crusher located nearby. At that point of time, the respondents issued transport permits after collecting the seignoerage fee on the quantity extracted. Rule 10 of the Rules has been referred to. It is clear that the seignoerage fee can be collected on the boulders extracted from the land. They have to be dispatched under permit issued by the mines department i.e., the 3rd respondent under Rule 34 of the Rules, 1966.

29. It is also stated that the Assistant Director of Mines and Geology had collected the seignoerage fee on the boulders after its excavation for movement of the petitioner's crusher nearby. Surprisingly, Assistant Director had been collecting seignoerage fee for transportation of the crushed material on the basis of supply to NHAI. It was made clear that as per rules, the seignoerage fee is payable once only on the quantity of boulders removed from the quarry, but not on the measured quantity of the metal supplied. It was also brought to the notice that this Court had held that seignoerage fee is payable only on the excavated mineral and not on the finished product.

30. It is also averred that the road metal made from the boulders when measured on volumetric basis measures more in volume on account of the bulkage resulting from the 'voids' which was inherent in the very nature of things as they were. This fact was also supported by P.N. Khanna's India Practical Civil Engineering Handbook. It is also relevant to note that this procedure was also followed by the South Eastern Railway. Even the recent test report on conversion of big stones into ballast, given by Chaitanya Bharati Institute of Technology, Hyderabad supports the view that "the ballast made from the raw stones when measured on volumetric basis measures more in volume".

31. It is also further stated that according to proven physical laws, there was a large variation between the quantity of material actually removed from the quarry in the shape of big stones (for which seignoerage fee had to be paid under the Rules as mentioned above) and the quantity of road metal in the shape of small pieces supplied to the railways. This variation was due to the fact that a large piece of stone measuring 1 cum of volume when converted into small stones either by breaking or crushing and heap would measure 1.818 or 1.82 cum. The resultant higher volume is due to the 'voids' that develop in between the heaped up small stones. When the heaps of boulders ballast are measured according to the standing methods, these voids are also taken into account. These are built into the heaps or stacks. The inflated volume here is an illusion, but that is mixed with reality.

32. It is further stated that it is seen from the above proposition that the volume of a large stone measuring 1 cum when converted into small stones and stacked and loaded into vehicles would measure about 1.818 or 1.82 cum due to 'voids' occurring between the small stones. Now, if the monolithic stone of 1 cum volume is weighed and compared with the weight of the total quantity of the small stones manufactured from this, i.e., 1.818 or 1.82 cum, both should be identical. In other words, the inflationary content in the volume of stacked stones can be established by weighment method since 'voids' would not weigh.

33. It is also further stated that in spite of bringing to the notice of the Assistant Director of Mines and Geology, force and coercion made the company to pay seignoerage fee once again at the time of dispatch to the work spot execution the company paid seignoerage fee of Rs.187 for the quantity of rough stone 5.66 cubic meters. After crushing and dispatched to spot company was compelled to pay seignoerage fee once again for quantity of 5.66 cubic meter as the crushed product would measure 11 cubic meter on volumetric measurement the company was asked to pay the same basing on the quantity of material supplied to road project. No notice was given in writing to that effect but the vehicles were not permitted to move without payment of the seignoerage fee for the second time. The seignoerage fee paid as the project undertaken was a time bound work as any impediments or obstructions to the project will only creates public in convenience and invite more critics from the ADB, which is a lending agency.

34. It is also stated that as per the scheme of the Act and the Rules, quarry leases were granted on payment of royalty and seignoerage fee as fixed by the State Government. As soon as the royalty/seignoerage fee paid to the Government in respect of the quarry lease, lessee becomes the owner of the Minor Mineral and he is free to sell the same in domestic market whatever may be the right of the Government initially over the

underground minerals, once the royalty/ seignoerage fee paid by the leaseholder to the Government and Mineral is extracted, the owner ship of the mineral so extracted passes on from the Government to leaseholder and for all purposes the petitioner will be deemed to be the owner of the property, and any control, interference and further demand of seignoerage fee is not provided for in the Act and amounts to violation of his rights. The State had no control over the sale of minerals once the royalty or seignoerage fee paid. Further, demand of seignoerage fee basing on the quantity of crushed metal supplied is outside the purview of the Act and ultravires the provisions of the Act.

35. It is further stated that in spite of bringing to the notice of the authorities the conversion factor, the 3rd respondent had been demanding the seigniorage fee. No order in written or an notice is given to that effect, but transportation was interfered and dispatch was stopped. The action is arbitrary, illegal, unjust, unconstitutional and contrary to rules. The seigniorage fee had to be paid as per Rule 10 and not on the crushed material supplied to road project. Any demand and collection had to be in consonance with Rules. The Full Bench of this Court held that once the documentary proof of payment of seigniorage fee is produced, it is sufficient proof. Since the grant of leases the company had paid the seigniorage fee and was issued royalty paid permits. The same are filed as Annexures and they may be read as part and parcel of this affidavit.

36. It is also stated that it was also brought to the notice of the department that technical references relating to conversion factor etc., are very much relevant and have to be agreed to at any stage. It was also brought to the notice that the lease deed and agreement between the department and the petitioner are not in conflict with the Rules. The technical references made by the petitioner will be held with the department to implement the rules. Quantity of road metal as supplied to road project cannot be taken into account and only the boulders removed from the quarry in terms of Rules 1966 had to be taken into account for assessing the seignoerage fee. But the 3rd respondent did not pay any heed and is proceedings with the collection of seignoerage fee in terms of volumetric measurement and interfering with transport. The Assistant Director cannot demand the seignoerage fee on the mineral where the mineral had already suffered seignoerage fee. Unless this Court intervenes and issues appropriate directions the company will suffer great hardship and irreparable loss.

37. This Court issued Rule Nisi on 12.04.2001 and made interim orders in WPMP.No.8720 of 2001 dated 12.04.2001 and 16.04.2001 as well and the said order read as hereunder:

"The petitioner alleges that the 3rd respondent is deducting seigniorage fee

said to be payable by the petitioner under the APMMC Rules, 1966 to the Mines and Geology Department of the State Government by making illegal deductions from the bills payable to the petitioner.

The petitioner is a contractor with the railways working in pursuance of the contract under the territorial jurisdiction of the 3rd respondent. The petitioner is also a holder of quarry lease for road metal, which is valid as on date, having been entered into in March, 1998 and valid upto August 2008. In respect of the metal extracted under the aforesaid quarry lease, the petitioner has been paying the seigniorage fee to the concerned authorities in the Mining Department of the State Government. Despite production of proof of seigniorage fee paid by the petitioner to the 3rd respondent, the 3rd respondent is alleged to be deducting the seigniorage fee assumed to be due from the petitioner from the bills due to him on the basis of an artificial assessment of the volume of ballast supplied by the petitioner to the 3rd respondent under contract.

It is asserted by the petitioner that even without passing any order, the 3rd respondent is deducting the seigniorage fee illegally.

In the circumstances asserted by the petitioner, the 3rd respondent is directed, pending further orders on this application, not to deduct the seigniorage fee from the bills due and payable to the petitioner, if the petitioner produces to the 3rd respondent proof of seigniorage fee having been paid by the petitioner. The 3rd respondent shall also refrain from deducting the seigniorage fee from the bills of the petitioner on the basis of volumetric analysis of the ballast supplied by the petitioner."

"16.04.2001.

The petitioner is engaged in a joint venture in respect of a contract for widening of four lane highway between Viayawada-Eluru National Highway N.H.5 projects under an agreement with National High Way Authority of India. The petitioner also has a quarry lease in Kadimipathavaram village, G.Konduru Mandal, Krishna district in an extent of 1.214 hectors granted by the Deputy Director of Mines and Geology, Kakinada in proceedings 27.04.1998. The lease is for the period from 21.03.1998 to 20.03.2008. The petitioner is engaged in the process of crushing the bigger boulders quarried into smaller stones of 40 MM, 20 MM, 12 MM and 6.7 MM for the purpose of user in the joint venture in respect of the contract of widening the high way. The petitioner pays the seigniorage fee on the boulders quarried, but, the respondent is alleged to be demanding payment on the basis of the volume of the metal and on that basis demanding additional seigniorage fee.

In similar matters, this Court, in particular, in WPMP.No.22563/99 in WP.No.17917 of 1000 granted interim stay of collection of seigniorage fee from the petitioners on the basis of volumetric analysis on condition of the petitioners producing proof of seigniorage fee already paid on the boulders quarried on the premises in respect of which it has been granted quarry lease. The earlier orders of this Court dated 12.04.2001 is modified to the above extent and in tune with the orders of this Court aforementioned."

38. WVMP.No.2245 of 2001 is filed to vacate the interim orders passed in WPMP.No.8720 of 2001. In the counter-affidavit filed by the respondents, it is stated that the petitioner in W.P.No.6874/2001 submitted two Quarry lease applications for grant of Quarry leases for Road Metal for a period of 10 and 15 years respectively before the Assistant Director of Mines & Geology, Vijayawada. The Assistant Director of Mines & Geology submitted necessary proposals to the Deputy Director of Mines & Geology (DDM&G) for granting Quarry leases. The Deputy Director of Mines & Geology, Kakinada had granted the leases for Road Metal and the lease had been executed in

favour of the petitioner and the leases will be in force up to 20-3-2008 and 10-5-2013 respectively. The other petitioner in W.P.No.9486/2000 was granted quarry lease for Road Metal by the DDM&G, Kakinada vide proceedings No.423/Q3/97 dated 3-2-98 for a period of 15 years which will be in force up to 6-2-2013. The petitioner in W.P.No.9498/2001 was granted quarry lease for Road Metal by the Deputy Director of Mines & Geology, Kakinada after getting transfer of the quarry lease, which was granted in favour of one Sri.Ch.Narasimha Rao, and the lease was in force up to 29-3-2008. Further, it was submitted that the petitioner applied for dispatch permits for Road Metal from time to time and obtained dispatch permits for Road Metal only and transporting from Quarry to the Primary Crusher, constructed within the leased area. The contention of the petitioner is not correct since he never hold any lease for boulders in the jurisdiction of Krishna District. In the absence of any lease held by the petitioner for boulders, the question of payment of Seigniorage fee for boulders does not arise. Therefore, the contention of the petitioner cannot be accepted.

39. It is also stated that Geologically all the Minerals are from different rock formations. The Mineral Road Metal can broadly be considered as different sizes of stone material required for formation of Road as per the technical specifications, viz., 40 mm, 20 mm, 12 mm, 6.7 mm etc., Thus, the rate of Seigniorage fee of Road Metal was scheduled at Rs.33/- per cubic meter. The different sizes of Road Metal may not obviously be produced by mechanized process, but may also be produced by manual process at the site. It is the look out of the leaseholders to produce the mineral for which they obtained the lease. In the instant case the material supplied is road metal.

40. It is further stated that as per schedule I of rule 10 of Rules, 1966 the Seigniorage fee is payable on the Mineral dispatched or consumed from the leased area at the rates specified after obtaining dispatch permits from the concerned Assistant Director of Mines & Geology by duly paying the Seigniorage fee payable to the Government. In the instant case the petitioner operating the quarries by putting bore holes to a depth of about 10 to 12 feet and blasting the material by using explosive. After blasting, the petitioner was getting the production of Road Metal ranging from dust 1 to ½ feet sizes of stone aggregates and the same were being loaded into heavy dumpers by using poclains and transporting to the primary crusher, which was within the leased area, with permits issued by the office for Road Metal only, but not dispatching boulders of 1 cu mt., size as contended by the petitioner.

41. Further, it is submitted that the petitioner submitted the application for the dispatch of Road Metal only, but not boulders. The petitioner after crushing the stone aggregates produced from the quarry converting into different sizes of Road Metal and transporting from the leased area. At any stage the petitioner was not transporting the Minor Minerals

in the shape 1 cubic meter boulders from Quarry to crushers. They are transporting only in the shape of stone aggregates in the heavy trucks.

42. Further, it is also stated that the Petitioner was paid by the authorities of National Highway Authority of India at Rs.25/- per cubic meter on Stone aggregates towards Seigniorage fee payable to the Government of Andhra Pradesh. As seen from the certified copies issued by the National High Way Authority of India authorities and the consultant Engineers, they had calculated the Seigniorage fee payable to the Government of Andhra Pradesh on the stone aggregates ranging from stone dust to 40 mm size, but not on the boulders as stated by the Petitioner. Therefore, the petitioner is getting back the component of Seigniorage fee from the Government of India at Rs.25/- on the quantity of Minor Minerals utilized in the form of Road Metal of sizes ranging from dust to 40 mm in the National High Way work, but not on the boulders as stated by them.

43. Further it is stated that the petitioner is transporting the stone aggregates from the leased area not only to the Road Work, but also to different private industries in the trippers and trucks for which the petitioner is collecting the amount on the basis of volumetric analysis actually carrying in the lorry, but not on the ratio of boulders as contended by him. Therefore, the petitioner is liable to pay the Seigniorage fee on the quantities of minor Minerals consumed or dispatched from the leased area. The respondents are collecting the Seigniorage fee only at the initial stage of transporting Road metal from Quarry to crusher, but not at the time of transportation of different sizes of processed stone aggregates. However, the respondents are insisting for production of proof of payment of Seigniorage fee at the time of transportation of stone aggregates from crusher to Road works and other private people. The contention of the petitioner that the respondents have no jurisdiction to call for any information once it is dispatched from the leased out area is totally incorrect. Under rule 26 of the Rules the defendants are competent to do so as observed by the Full Bench of this Court reported in 1993 (1) ALT 99 which is confirmed by the Supreme Court also.

44. It is also further stated that as per the Rules, the petitioner had to pay Seigniorage fee on the Minor Minerals at the time of dispatch from the leased areas on the volumetric basis only, but not on the insitu rock. Once the petitioner broke the insitu rock and loaded into the trucks he is liable to pay Seigniorage fee as per the volume of the truck, but not as per the insitu size of the rocks. In the instant case the petitioner is transporting the stone aggregates ranging from stone dust 1 to ½ feet sized stone aggregates from leased area to Primary crusher. If the petitioner converts these stone aggregates transported from Quarry to Crusher, under any circumstances he may not get more quantity than the quantity of Raw material transported from Quarry to crusher because

the percentage of voids decreases, when the size of the stone decreases. Therefore, the petitioner will never get twice the quantity of processed mineral against the raw material transported from the quarry to crusher. Further, it is submitted that as per the procedure in vogue, all the Engineering Departments in the State are providing the Seigniorage fee at the time of estimation for stone aggregates to be consumed in the works, but not on the insitu rock to be removed and transported from the leased land. In the instant case the petitioner also had been paid by the NHAI i.e. National Highway Authority of India on the loose aggregates, which were actually consumed in the Road work, but not on the boulders or the insitu rocks, which was removed from the leased area. The petitioner is not paying any extra amount except the amount provided by the NHAI authorities in the tender estimates. Therefore, the contentions of the petitioner are not tenable and not acceptable.

45. It is also further stated that the seigniorage fee will be paid through treasury challans in advance by the leaseholder in order to obtain dispatch permits from time to time and the permits will be obtained voluntarily depending upon the demand. At no stage, the seigniorage fee will be directly collected by the department. Thus, at no instance, this office had collected double the seigniorage fee on a single dispatch permit. Every dispatch permit will have the supporting royalty paid transit waybills for the quantity issued against each quarry lease. The transit waybill will be numbered serially starting from 01 in respect of every lease for a respective financial year. As such, the question of collection of double the seigniorage fee for a single dispatch permit does not arise.

46. Further, it is also stated that certain officers of this department are empowered under Rule 2 of the Rules 1966 to check the mineral traffic as well as the minerals including the processed mineral stocked in possession of any organization or individual in order to verify and to assess the payment of seigniorage fee to the Government. Thus, constant vigil over the mineral traffic of the district is organized in order to curb the leakage of mineral revenue to the State exchequer. Keeping in view of evasion of seigniorage fee by some of the leaseholders and transporting material without obtaining dispatch permits under Rule 34 of the Rules 1966 the department is resorting for periodic check of the vehicles. When the petitioner possesses the valid dispatch permits he can produce the same to the checking authority.

47. It is also further stated that according to the Rules 1966, quarry leases for minor mineral concession will be granted by the Deputy Director of Mines and Geology concerned basing on the recommendations made by the Assistant Director of Mines & Geology concerned on the application filed by the interested individuals or agencies.

According to the said provisions, no royalty or seigniorage fee is needed to be paid at the time of grant. The grantee shall pay one year dead rent in advance at the rates prescribed in order to execute the lease deed and in turn to execute the lease deed and to get work orders. Then only the grantee becomes leaseholder. Seigniorage fee had to be paid when the leaseholder intends to dispatch the mineral over and above to that of the quantity equivalent to the dead rent. At no stage the leaseholder can avoid payment of seigniorage fee on the dispatches made by him from the leased area. According to Rule 34 (1) of the Rules 1966, the leaseholder shall invariably obtain dispatch permits for the quantities proposed to be removed from time to time on payment of seigniorage fee in advance. But in the instant case the petitioner without paying the seigniorage fee for minor minerals produced and transported from the quarry to crusher and the processed mineral transported from crusher to roadwork and other private individuals. The respondents never objected the petitioner for selling of stone aggregates either to his own work or to the private individual, provided if he produce the proof of payment of seigniorage fee for the raw material consumed. As per the information furnished by the NHAI authorities and the consultant engineer, the petitioner had transported huge quantities of stone aggregates illegally without valid permits issued by the 3rd respondent and evaded crores of seigniorage fee towards mineral revenue payable to the Government exchequer. The respondents are periodically requesting the petitioner not to transport the minor minerals without payment of seigniorage fee payable to the Government, but the petitioner repeatedly violated the rules and regulations of the Rules. The petitioner being established civil contractor is well aware of the provisions of the Rules 1966. On one side he had obtained lease, but on the other side in violation of the rules he indulged in transportation of minerals without permits.

48. It is also further stated that the respondents had been collecting necessary information from the office of the NHAI and the consultant engineer and cross verified with the seigniorage fee payments made by the petitioner. After comparison, it was found that the petitioner had transported huge quantities of minor mineral from the leased area illegally, unlawfully without payment of seigniorage fee payable to the Government. The same fact had been informed to the petitioner vide office Lr.No.3454/Q/98, dated 25.09.2000 and requested him to submit his explanation for the variation of consumed and permitted quantities, but the petitioner failed to submit any reply or proof of payment of seigniorage fee for the quantities utilized in his work. Finally, the 3rd respondent issued demand notice to the petitioner with a request to pay the seigniorage fee. Instead of payment of seigniorage fee, he preferred an appeal before the 2nd respondent. The petitioner failed to submit the proof of payment before the 2nd respondent even after giving ample opportunities for production of proof of payment of seigniorage fee. Finally,

the 2nd respondent up-held the action of the 3rd respondent and directed the petitioner to pay the mineral revenue payable to the Government. Instead of paying the seigniorage fee, the petitioner preferred revision before the 1st respondent and also filed WP.No.4149 of 2001 and obtained the following final orders vide order, dated 14.03.2001.

> "The addressees are directed to issue transport permits for quarrying and for removal of road metal on condition that the petitioner pays the seigniorage fee and quarry and remove the road metal and soil on payment of seigniorage fee in future insofar as the arrears are concerned the same shall be decided in the revision pending before the Government and there shall be a direction to the Government to dispose of the revision within four weeks from the date of receipt of a copy of the order."

The revision petition filed by the petitioner was also disposed of by the Government on 16.07.2001.

49. After the disposal of the above writ petition, again the petitioner filed the present writ petition with a different plea and obtained interim orders by suppressing all the facts mentioned supra. Therefore, this respondent had given ample opportunities before issuing the demand notice to the petitioner and the 3rd respondent is not at all demanding the payment of seigniorage fee again at the time of transportation of stone aggregates from crusher to the work or to the private individuals as stated by the petitioner. The 3rd respondent is insisting only the proof of payment of seigniorage fee for the raw material procured and transported from quarry to crusher while transporting stone aggregates from crusher to different places.

50. It is also stated that the petitioner was once again requested vide office letter No.110/Q/98 dated 26.06.2000 to submit the following information in order to implement the orders of this Court.

1. Details of dispatch permits obtained for boulders by them against each such lease since inception.
2. Details of payments made by them towards seigniorage fee against each such lease along with remittance particulars viz., challan number and date etc.

51. Even though the petitioner had received the said letter well in advance, he had not submitted the required information. Instead of submitting the information required by the respondent, the petitioner sought 15 days time for submitting the same. This clearly shows that the petitioner had no valid ground or information to submit to the respondent. Therefore, the petitioner submitted false information before this Court stating that he had paid the seigniorage fee for boulders and obtained dispatch permits for converting into different sizes of raw material and obtained interim orders from this Court. The respondents had never granted any lease to the petitioner for boulders till date. In the absence of any lease for boulders in favour of the petitioner, the question of submission

of proof of payment of seigniorage fee for road metal of different sizes during the transportation does not arise.

52. Further, it is stated that the petitioner had already been paid by the NHAI @ Rs.25/- per cubic meter up to 28.06.2000 and presently paying at Rs.33/- per cubic meter with effect from 29.06.2000 as per the conditions of agreement on loose aggregates or insitu rock. Instead of repaying the seigniorage fee to the department, the petitioner is submitting different type of versions to different authorities and prolonging the issue in order to avoid payment of mineral revenue payable to the Government having paid the same by NHAI to the petitioner.

WP.No.9486 of 2001

53. This writ petition is filed by M/s. Naveen Stone Crushers, praying for the relief of writ of Mandamus declaring the action of the respondents in demanding payment of seigniorage fee prescribed as per Rule 10 of APMMC Rules 1966 as arbitrary, illegal and unconstitutional and consequently direct the respondents to assess and collect seigniorage fee on the excavated and dispatched boulders as per Rule 10 of APMMC Rules, 1966 and pass such suitable orders.

54. This Court issued Rule Nisi on 15.05.2001 and granted interim stay in WPMP.No.12011 of 2001.

55. Since the averments made in this writ petition are identical to the one in W.P.No.6874 of 2001 except the survey numbers, extent of land and their location, which were narrated above, there is no necessity to restate them.

56. WVMP.No.2245 of 2001 is filed by the respondents in the WP.No.6874 of 2001. A common counter-affidavit on similar lines as filed in W.P.Nos.6874 and 9498 of 2001 is also filed in this writ petition. Hence, there is no necessity to restate the same.

WP.No.9498 of 2001

57. K. Srinivasa Rao, the writ petitioner, filed the present writ petition praying for a writ of Mandamus declaring the action of the respondents in demanding payment of seigniorage fee on the quantity of road metal supplied instead of the seigniorage fee prescribed as per Rule 10 of APMMC Rules, 1966 as arbitrary, illegal and unconstitutional and consequently direct the respondents to assess and collect seigniorage fee on the excavated and dispatched boulders as per Rule 10 of APMMC Rules, 1966 and pass such suitable orders.

58. This Court issued Rule Nisi on 15.05.2001 and in WPMP.No.12025 of 2001 the

following interim order was made:

> "In similar matters, this Court in particular, in WPMP.No.22563 of 1000 in WP.No.17917 of 1999 granted interim stay of collection of seigniorage fee from the petitioners on the basis of volumetric analysis on condition of the petitioners producing proof of seigniorage fee already paid on the boulders quarried on the premises in respect of which it has been granted quarry lease.
>
> Following the same, there shall be stay of collection of seigniorage fee from the petitioners on the basis of volumetric analysis on condition of the petitioners producing proof of seigniorage fee already paid on the boulders quarried on the premises in respect of which it has been granted quarry lease."

59. Since the averments made in this writ petition are identical to the one in W.P.No.6874 of 2001 except the survey numbers, extent of land and their location, which were narrated above, there is no necessity to restate them.

60. WVMP.No.2245 of 2001 is filed by the respondents in the WP.No.6874 of 2001. A common counter-affidavit on similar lines as filed in W.P.Nos.6874 and 9486 of 2001 is also filed in this writ petition. Hence, there is no necessity to restate the same.

WP.No.21788 of 2002

61. M/s. Siddardha Constructions Private Limited, the writ petitioner, filed the present writ petition praying for a writ of Mandamus declaring the action of the respondents in Proc.No.1775/ARM/98-6, dated 30.06.99 and 04.08.99 of the 3rd respondent and the action of the 2nd respondent in confirming the proceedings of the 3rd respondent in appeal order dated 19.10.2002 as arbitrary, illegal, unjust and contrary to APMMC Rules 1966 and consequently call for the records in the said proceedings and set aside the same and pass such suitable orders.

62. This Court issued Rule Nisi on 31.10.2002 and interim stay was granted. The respondents moved WVMP.No.3836 of 2003.

63. It is stated that the petitioner company was one of the Contractors for supply of Ballast to the South Central Railway. The Company was granted quarry leases for Rough Stone & Road Metal from the Respondents on 13-12-1993, 26-02-1994 and 18-04-1997.

a) Quarry lease was granted by proceed Proc.No.2401/M2/93, dt.31-12-1993 of Asst. Director of Mines and Geology, Nalgonda over an extent of 2 Hectares in Sy.No. 733 of Raigiri Village, Bhongir Mandal, Nalgonda district, for a period of 15 years.

b) Quarry lease was granted vide Proceedings No.3291/M2/93, dt. 31-12-1994 of the Asst. Director of Mines and Geology, Nalgonda over an extent of 2.00 Hects., in Sy.No.742 of the same village.

c) Quarry lease was granted vide Proceedings No.2405/M2/96, dt. 18-06-1997 of Asst. Director of Mines and Geology, Nalgonda over an extent of 7 Hectares for 15 years. Necessary lease deeds have also been entered into by the petitioner under the relevant rules of the Mines Department for all the above leases. Since then the petitioner had been working the quarries taking Rough Stones from the quarries to its Crushing Unit at Raigiri, converting them into Ballast by Crushing and supplying the Ballast to the South Central Railway.

64. It is further stated that the Ballast was manufactured from Rough Stones obtained from quarries leased out by the Mines Department of Government of Andhra Pradesh. The raw material or Stones are taken from the quarries to the crusher at Raigiri, which is 2½ km away from the quarry site for crushing on payment of Seigniorage fee and on obtaining the permit from Asst. Director of Mines and Geology. By crushing, the big stones brought from the quarries are converted into small stones of 50MM., size which are used on the Railway tracks as Ballast.

65. In para 5 Rules 10 and 34 of the Rules 1966 had been referred to.

66. It is stated that the Deputy Director of Mines and Geology issued Notices to the petitioner demanding the Seigniorage fee for the quantity of Ballast supplied by the petitioner to the South Central Railway. Even before submitting the explanation a demand notice was issued vide proceedings No.1775/ARM/98/6, dt.30-06-1999 calling upon the petitioner to pay a sum of Rs.6,86,300/- being the Seigniorage fee with 5 times penalty on the quantity of 4562 M3 of Railway Ballast supplied to South Central Railways as proof of Documentary Evidence of Payment of Seigniorage fee was not produced as per Rule 26 (3) (ii) of the Rules, 1966. Accordingly, petitioner sent a reply on 26-07-99 stating that for the said quantity seigniorage fee was already paid furnishing the copies of challans under which the payment was effected for the required quantity of Rough Stone required.

S.No.	Cubic Meter	Amount of S.F. Paid.	Challan Nos. & Date.	Permit No.
01.	2500 M3	Rs.37,500	Ch.No. 872, dt. 31-01-96.	No.70/MINES/ 95-96 dt. 01-02-1996.
02.	2500 M3	Rs.37,500	Ch.No.1848, dt.31-01-96.	No.87/NLG/ MNR/RSS/95-96 dt.22-03-96

67. It was also made clear that as per Rules the Seigniorage fee is payable by the

petitioner only on the Quantity of Rough Stones removed from the quarry, but not on the finished product. Without considering the same, the Deputy Director replied vide proceedings dated 04-08-1999 that Seigniorage fee had to be paid on the Total Quantity of Ballast supplied to South Central Railway.

68. It is also stated that questioning the Demand notices petitioner filed W.P. No.17417 of 1999. The Proceedings were stayed pending writ petition. The writ petition was heard and disposed of on 13-11-2002 that itself transpires that there is some evidence of material which discloses that the petitioner had paid Seigniorage fee for 5000 cubic meters of the mineral and had also obtained dispatch permits for the same. But the action of the Deputy Director in issuing the Demand Notice is on the information received from the Railways. The petitioner had an alternative Remedy of Appeal under Rule 35 of APMMC Rules, 1996 and having regard to the fact that disputed questions of fact are involved including as to the quantity of Mineral Mined by the petitioner, and the quantity of mineral supplied, it is appropriate that the dispute should be resolved in appellate proceedings. It was further held that the Royalty or Seigniorage Fee is a tax and that in terms of the provisions of the Act the taxable event being determinate concept, the only dispute could be with regard to the quantity of Mineral extracted. The Seigniorage fee paid by the petitioner cannot also be a matter of dispute on the records of the respondent, which disclose this fact. The petitioner also could be called upon to produce challans through which he had paid the amount. As the period of limitation expired for filing appeal the learned Judge granted 10 days time from the date of receipt of a copy of the order to prefer appeal to the Director and there upon the Director was directed to hear and pass a speaking order within 4 weeks and in the meanwhile directed that respondent shall forbear from taking any coercive steps to recover the amount pursuant to demand notice dt. 30-06-1999.

69. It is stated that the petitioner preferred W.A. No.1975 of 2001 wherein a Division Bench of this Court by order dated 24.12.2001 disposed of the appeal confirming the order in W.P.No.17417 of 1999 dated 14-11-2001 extending the time by two weeks for filing appeal and stayed the proceedings directing the respondents that they shall forbear from taking coercive steps to recover the amounts due pursuant to demand notice for a period of four weeks by which time the appeal had to be disposed off.

70. It is averred that in terms of the directions, appeal was filed on 02.01.2002 along with all the documentary proof of payment of seigniorage fee. The Appeal was heard on 25.01.2002. Smt N.Shoba, learned counsel, represented the same on behalf of the petitioner. On conclusion of the arguments, the Director directed to file an affidavit to the effect of the payment of seigniorage fee paid for 5000 cubic meters during the period from 26.02.1996 to 30.04.1997 furnishing the details of challan numbers and permit numbers

within one week. As per the said direction, an affidavit was filed on 31.01.2002 along with covering letter of the petitioner's Advocate and the same was received by the Director on 31.01.2002 and reserved the appeal for orders. Several Judgments were cited including the Judgment of the Supreme Court reported in State of Orissa and others Vs. Steel Authority (1998 (6) Supreme 281) wherein the Supreme Court held in a identical situation that "*Royalty is payable by respondent lessee on unprocessed Minerals to the State. High Court was wrong in holding that it was payable on the quantity of processed minerals*". Seigniorage fee is paid and being paid by the petitioner for whatever the Mineral removed from the leased area after obtaining a permit. Without looking and verifying the records, the proof of challans and the permits furnished in terms of the judgment of writ petition, the Director of Mines and geology dismissed the Appeal upholding the Demand Notice stating that Supreme Court Judgment had no relevance to the case as the lease granted is for rough stone/road metal/Ballast only. Volumetric and measurement of compact block cannot be taken in to criteria for analysis, which is baseless, and further held that the company had failed to produce any evidence of having paid seigniorage fee even for boulders. The order of the Director is absolutely without application of Mind and is arbitrary and illegal and cannot be called a speaking order.

71. It is further averred that the proof of the documentary evidence was submitted to the Deputy Director of Mines and Geology along with the reply dated 26.07.1999.

S.No.	Cubmic Meter	Amount of S.F. paid	Challan Nos.& date	Permit No.
01.	2500 M3	37,500/-	Ch.No.872 dt.31.01.96	No.70/MINES/95-96 Dt.01.02.1996
02.	2500 M3	37,500/-	Ch.No.1848 dt. 31.01.96	No.87/NLG/MNR/RSS /95-96, dt 22.03.96

72. It was also brought to the notice of this Court in the writ petition, which was also recorded, and the Director was directed to take cognizance of the same. During the course of hearing, the Director was also directed to file an affidavit to that effect as permit copies and challans were already filed along with Appeal and Affidavit was filed on 31.01.2002 which was received by him, but surprisingly order was passed that no documentary proof of evidence was produced.

73. It is stated that the Ballast made from the Rough Stones, when measured on volumetric basis measures more in volume on account of the bulkage resulting from the voids, which is inherent in the very nature of things as they are. This fact was also

supported by P.R.Khanna's India Practical Civil Engineering Handbook. It is also relevant to note that this procedure was also followed by the South Eastern Railway. Even the recent Test Report on Conversion of long stones into Ballast, given by Chitanya Bharati Institute of Technolocy, Hyderabad, supports the view that "the ballast made from the raw stones when measured on volumetric basis measures more in volume."

74. It is stated that according to proven physical laws, there is a large variations between the quantity of material actually removed from the quarry in the shape of big stones (for which seigniorage fee had to be paid under Rules, 1966 as mentioned above) and the quantity of Ballast in the shape of small pieces supplied to the Railways. This variation is due to the fact that a large piece of stone measuring 1 cum of volume when converted into small stones either by breaking or crushing and heaped would measure 1.818 or 1.82 cum. The resultant higher volume is due to the voids that develop in between the heaped up small stones and when the heaps of Ballast measured according to the standard methods, those voids are also taken into account. These are built into the heaps or stocks. The inflated volume here is an illusion. But that is mixed with reality.

75. It is further stated that from the above proposition it is seen that the volume of large stone measuring 1 cum when converted into small stones and stacked would measure about 1.818 or 1.82 cum due to voids occurring between the small stones. Now, if the monolithic stone of 1 cum, volume is weighed and compared with the weight of the total quantity of the small stones manufactured from this, i.e., 1.818 or 1.82 cum., both should be identical. In other words, the inflationary content in the volume of stacked stones can be established by weighment method since voids would not weight.

76. It is also stated that though it was a proof on fact that the conversion factor had to be accepted which is in existence and had been accepted by other States and South Eastern Railway wherein circulars were issued accepting the same. Director held that the contention is baseless against to the grant order and further stated that if the size of the boulder is more than cubic meter then it would be granite and the seigniorage fee payable is Rs.3000/- per cubic meter as per Rule 12(5) of Rules, 1966. It is absolutely false to state that the cubic meter blocks cannot be fed into crusher for crushing purposes. In order to save the passed component the leaseholders reduced the series within vicinity of the quarry site and hence liable for seigniorage fee for whatever volume coming out from the leased area.

77. It is stated that seigniorage fee was paid by the petitioner on whatever brought out from the leased area. The crushing unit is at a different place and the material from the leased area is transported to crushing point and after process being undergone the

material is supplied to South Central Railway.

78. It is also stated that though order is passed on 19.10.2002 the same was not communicated to the petitioner, but it is surprising that one of the Assistant Director of Mines and Geology from the office of the Director had personally approached the respondent Nos.4 and 5 and submitted a copy of the order and requested orally to withhold the payment and pay the same to their office from the present bills. It is further stated that the contract had been concluded and no such endeavour can be made by the mines department which is nothing but mala fide because the petitioner approached this Court without yielding to their request of satisfaction.

79. It is also stated that with difficulty the petitioner secured a Xerox copy of the order of the Director on 24.10.2002 and a revision was preferred to the 1st respondent in terms of Rule 35-A of the Rules on 25.10.2002. The petitioner also requested to stay the proceedings pending disposal of the revision. As it is the minister, who had to pass the orders, due to the preoccupation had not passed any orders on the stay petition. A pressure was brought by the office of the 2nd respondent on respondent Nos.4 and 5 for recovery of the demanded amount from the petitioner running bills in which event the petitioner will suffer loss and hardship. There was a stay through out in the writ petition, writ appeal and pending appeal.

80. In the counter affidavit filed by the respondents, it was pleaded in paras 3 to 14 as hereunder:

> "With reference to para 2, it is submitted that the petitioner is totally misconceiving the facts and filing writ petition again and again on the matter which already settled by this Hon'ble High Court and confirmed by Hon'ble Supreme Court. It is submitted that the petitioner is supplying the ballast to South Central Railway. The Deputy Director, Mines and Geology, Hyderabad has obtained the particulars of ballast supplied to the railway department and the payments made to the petitioner by South Central Railways. On verification of the records, it was noticed that the petitioner has supplied ballast to the railway authorities for a total quantity of 4562 M3 without paying S. Fee to the Government. The petitioner company has already received the money from South Central Railway for having supplied the above quantities. As such the Deputy Director of Mines and Geology, Hyderabad has issued a show cause notice on 27.08.1998 and then issued a demand notice No.1775/ARM/98-6, dated 30.06.1999 directing the petitioner to pay the normal S. fee of Rs.1,14,050/- and Rs.5,70,250/- towards 5 times penalty for the quantity of 4562 M3 of railway ballast. Aggrieved by the above the petitioner company has filed W.P.No.17417 of 1999 on the same issue. This Hon'ble High Court while disposing the said writ petition No.17417 of 1999 has directed the writ petitioner on 13.11.2001 to file an appeal before the appellate authority. On this judgment the writ petitioner preferred WA.No.1974 of 2001. The said writ appeal was also dismissed on 24th December 2001. The same writ petitioner has filed appeal before the 2nd respondent and the appeal as heard on 25.01.2002 and subsequently the appeal is dismissed by the appellate authority vide proceedings No.27280/MR3/01 dated 19.10.2002, since the action taken by the Deputy Director of Mines and Geology, Hyderabad is in conformity of the provision of M&M (D&R) Act 1957 and APMMC Rules 1966. The petitioner has also filed WP.No.24997 of

2001 questioning the validating of G.O.Ms.No.331, date 21.06.2000 to the extent of inclusion of road metal in the scheme of minor mineral. But the same was included by the Central Government in the year 1958 vide notification No.M-II-152(18)/54-A-11, dated 01.06.1958. In the guise of pendency of the said writ petition the petitioner is trying to mislead the respondents.

With reference to para 3, it is submitted that the petitioner has been granted the following quarry leases and executed the agreement for extraction of the following minerals.

Sl. No.	Location	Extent	Name of the mineral applied	Name of the mineral generated for	Period of lease
1.	742, Raigiri (V) Bhongir (M) Nalgonda Dist.	2.000 Hect	Railway Ballast & road metal	Railway Ballast & road metal	26.02.1994 25.02.2009
2.	733, Raigiri (V) Bhongir (M) Nalgonda Dist.	2.000 Hect	Railway Ballast & road metal	Rough stone/ road metal	31.12.1993 30.12.2008
3.	742 of Raigiri (V) Bhongir (M).	1.000 Hect	Rough stone/ road metal	Rough stone/ road metal	18.06.1997 17.2012

As per the provisions of Rule 10 of Rules 1966 the petitioner is liable to pay seigniorage fee on the minerals dispatched or consumed from the quarry site as per the terms and conditions of the lease deed. He is at liberty to utilize the said material in the crushing unit and transport the finished product to any place. As per the records, the lessee had obtained permits for a quantity of 5000 cubic meters only during the tenure of the said contract.

With reference to para 4, it is submitted that the petitioner is liable to pay S. fee on the material dispatched or consumed from the quarry site on whatever sizes it may be. The department never objected the petitioner to transport rough stone and extract chips of different sizes from his own crusher. The S. fee is liable to be paid on the quantity dispatched or consumed from the quarry site duly obtaining the permits on the specified minerals. As per Section 3(e) of the Mines and Minerals (Development & Regulations) Act 1957, the road metal is defined as “Minor Mineral” by the Central Government vide Notification No.M.II-152/(18) 54-A-11, dated 01.06.1958.

With reference to para 5, it is submitted, that according to Rule 34 of APMMC Rules 1966, the petitioner has to pay seigniorage fee in advance for the quantity intend to dispatch and remove the material from the quarry. But contrary to it the petitioner has supplied 4562 M3 of road metal / ballast to South Central Railway without paying the S. fee to the Government. The petitioner is liable to pay normal S. fee and 5 times penalty as they failed to produce any documentary evidence in token of having paid the S. fee as required under Rule 26(3)(ii) of APMMC Rules 1966. As such the contention of the petitioner that they have dispatched the material after paying S. fee to Government is not correct.

With reference to para 6, it is submitted that the Railway authorities have informed the Deputy Director, Mines & Geology, Hyderabad that the petitioner company has supplied 4562 cubic meters of ballast during the period from 1992 to 03.08.1998 for the works carried out for proving of crossing station at Nagireddypally, Bhonigir and Nadikudi Section (supplying and stacking of 50 mm stone ballast) vide their letter dated 03.08.1998. The railway authorities having also paid the value of the mineral covering an amount of Rs.15,94,507-84 to the petitioner which includes seigniorage fee component also. The Deputy Director, Mines & Geology Hyderabad vide show cause notice No.1775/AR/98-6, dated 27.08.1998 has issued a show cause notice to the petitioner to produce documentary evidence of having paid the seigniorage fee for the quantity of 4562 cubic meters of road metal supplied to South Central Railway within 15 days from the date of receipt of the notice. The petitioner failed to submit any explanation to

the Deputy Director, Mines & Geology, Hyderabad within the stipulated time. As such the Deputy Director, Mines & Geology, Hyderabad on 30.06.1999 i.e., after 8 months raised a demand for Rs.6,84,300/- towards normal seigniorage fee and 5 times penalty vide No.1775/ARM/98-6, dated 30.06.1999. After receipt of the demand notice the petitioner has given a reply through his Advocate letter dated 26.07.1999 stating that they have paid seigniorage fee for rough stone by furnishing the following analysis for a quantity of 4562 cubic meters supplied to railways.

Weight of stone ranges from 2640 to 2820 Kgs. Per cubic meter.

Average $\frac{2640 + 2820}{2}$ = 2730 Kgs taking as the weight 1 cub. Mts., of granite stone.

Weight of the loose ballast per one cubic meter volume .. 1400 to 1600 Kgs.

Average $\frac{1400+1600}{2}$ = 1500 Kgs taken as weight of 1 Cub. Mts., of ballast (loose) since the Ballast in sack is only loose ballast.

2730/1500 = 1.82 Cub. Mts., of ballast for 1 cub. Mts., of stone.

The petitioner has taken permits to supply the ballast to the railway work at Raigiri as per his application for permit and mode of transport was written as “Road” and utilization period is 2 months i.e., from 1.2.1996 to 15.3.1996 and 22.03.1996 to 21.04.1996. But the petitioner has executed the railway work at Nagireddypalli station. But in the application for permit it was mentioned as the “Loading station is Raigir, Railway Works” and supply stationer is “Beebenagar”. The permit which was referred to in this para was obtained on 01.02.1996 i.e., much earlier to the commencement of the work, since the petitioner has entered into agreement with South Central Railways on 26.02.1996. The 2nd permit which was referred to in this para was valid from 22.03.1996 to 21.04.1996, which is much earlier to the completion of the work i.e., on 30.04.1997. Hence, it is evident that the petitioner has given false statement to avoid payment of seigniorage fee to the Government.

Further, it is submitted that the petitioner has not shown any evidence that the permits obtained were in connection with railway work, though they have paid seigniorage fee in advance. It is not known whether the petitioner has obtained transit permits for the amount paid by him and supplied the same material to railways. The petitioner ought to have submitted the details of transport permits obtained and the way bills taken from the Assistant Director, Mines & Geology, Nalgonda to show an evidence that each lorry or tipper transporting the material to railway should carry the way bills issued by the Assistant Director, Mines & Geology, Nalgonda. The way bills contain the following details:

a. Date of Transport
b. Name of the consignee
c. Place of destination and
d. Quantity carrying

As the petitioner failed to produce any of the above evidence, it was construed that the material supplied to South Central Railway was un-authorisedly supplied. According to Rule 26 (3) (ii) of APMMC Rules 1966 was invoked and 5 times penalty was levied along with normal seigniorage fee.

Further the petitioner is applying for transport permits for road metal and rough stone for which the quarry leases were granted and executed. The Assistant Director Mines & Geology has also issued transport permits for road metal and rough stone. The railway authorities have paid the values of the mineral which includes seigniorage fee towards the supply of Ballast. Since, the lease was granted for road metal/ballast/rough stone the petitioner is liable to pay seigniorage fee for the material supplied to railways. Hence, the assumption of the petitioner

that for payment of seigniorage fee rough stone forms basis but not ballast/road metal is in correct. If the petitioner's assumption is agreed to, the petitioner will get double benefits by collecting the entire seigniorage fee component from railways and paying the seigniorage fee on less quantity of rough stone to Government, which enables the petitioner to gain unjust enrishment. The petitioner has to pay seigniorage fee for the minor minerals, dispatched or consumed from the quarry as per Rule 10(1) of APMMC Rules 1966. Further according to Rule 26(3)(ii) of the said rules, the petitioner has to produce the documentary evidence of having paid the seigniorage fee for the minor minerals consumed in the railway works. As the petitioner failed to produce any proof of payment of seigniorage fee, (5) times penalty was imposed along with normal S. fee. Hence, the assumption of the petitioner is denied.

In reply to para 7 and 8, it is submitted that the same writ petitioner has failed W.P.No.17417/99 on the same issue. This Hon'ble High Court while disposing the said writ petition has directed the writ petitioner on 13.11.2001 to file an appeal before the appellate authority. Aggrieved by the judgment the writ petitioner preferred W.A.No.1974/2001. The said writ appeal was also dismissed on 24th December 2001. The same writ petitioner has filed appeal before the 2nd respondent and the appeal was heard on 25.01.2002. At the time of hearing, the appellant was asked to furnish certain additional information required, but the same was produced by the petitioner on 31.01.2002 (1) a covering letter (2) a stamped affidavit of the appellant (3) with Xerox copies of the judgment. Except these documents, the petitioner has not produced any proof of documentary evidence. It is submitted that the facts of the judgment of the Hon'ble Supreme Court reported in 1998 (6) 281, which is cited by the petitioner are no way connected to the facts of the petitioner. Subsequently, the appeal was dismissed by the appellant authority vide proceedings No.27280/MR3/01, dated 19.10.2002.

With reference to para 9 and 10, it is submitted that the reply submitted at para 6 holds good and in addition to that it is submitted that the appeal was filed by the petitioner on 02.01.2002 and it was heard on 25.01.2002, when a quarry was granted under Rule 9 of the APMMC Rules, the S. fee shall be charged on all minor mineral dispatched/consumed from the quarry at the rates specified in the schedule-I. The petitioner was granted quarry lease for road metal/ballast and rough stone as such the petitioner is liable to pay S. fee at the rates specified in Schedule 1 to Rule 10 of APMMC Rules 1966. It is further submitted the petitioner has submitted non-notarised affidavit stating that the quantity of 4562 M3 of ballast supplied to South Central Railway has suffered the S. fee. The statement of the petitioner is denied since the assumption of the petitioner on compact rough stone resulting to loose ballast is against the rules as mentioned in prepares. The petitioner has to produce documentary evidence of having paid S. fee to Government as required under Rule 26(3)(ii) of APMMC Rules 1966. Hence, the contention of the petitioner is not correct. The petitioner in fact made application for road metal/ballast/rough stone and the same was considered and granted. The petitioner was entered into lease agreement also with the Government for road metal, ballast and rough stone. Now the petitioner contends that ballast is a finished product, hence no S. fee is liable to be paid which is not correct. A detailed speaking orders denying his version were issued on the appeal filed by the petitioner.

With reference to para 11, it is submitted that the petitioner has supplied the material and claimed the amounts on volumetric basis for minor mineral supplied to the works from the railways. Hence, the contention of the petitioner to charge S. fee on rough stone but not on road metal and ballast on volumetric basis is baseless and against the rules, to the grant order and against the terms and conditions of the lease agreement. The contentions that the ballast made out of rough stone one (1) cubic meter it measures on volumetric basis reflects more in volume has no meaning and he is liable to pay S. fee on the volumetric basis only. In the instant case, the petitioner has failed to produce any evidence of having paid the S. fee even for the material supplied to railways. Further, the petitioner drawn the amount from the railways towards seigniorage fee on ballast but failed to pass on the same to the Government which leads to unjust and enrichment. Hence, the contention of the petitioner is not correct.

With references to paras 12, 13 and 14 it is submitted that as per Rule 10(1) of APMMC Rules 1966 the S. fee has to be collected on the quantities of minerals dispatched or consumed from the leased areas. Normally the leaseholder will produce the boulders of various sizes ranging for few millimeters to beyond 50 mm or so. The said boulders are fed to stone crushers when they get different sizes. Accordingly, to their requirement they use the sizes normally for road metal of 50 mm chips are used. Further the boulders extracted from mine ranging from 150 mm to 300 mm. It is impossible to transport 1 cubic meter boulder size to make road metal of 50 mm chips, since cost of production of boulder of 1 cubic meter size is more, and no body resort to it. The S. fee payable for big size block is Rs.2000/- per cubic meter, since it falls under the category of granite useful for cutting and polishing as per Rule 12(5) of APMMC Rules 1966. If the petitioner is removing big blocks of above 1 cubic meter or more, this tantamount to misuse of the minerals in violation of the grant order and terms and conditions of the lease deed. Therefore, in order to save S. fee component and cost component the lease holders are reducing the sizes within the vicinity of the quarry site and feeding into crusher in the required sizes and the S. fee is being levied only Rs.33/- per cubic meter. Moreover one cubic meter cannot be fed into crusher for crushing purposes. Though there may be variation in volumetric measurement depending on the sizes of the boulders, but the department will collect S. fee on the dispatches of the lese holder. But technically, it is also not possible for the leaseholder to bring out the material from the leased area in a compact block of 1 cubic meter. It should be broken into pieces and whatever the volume coming out of the leased area it amounts to dispatch from the leased area for which S. fee is leviable. Moreover the quarry leases were granted for road metal, ballast and building stone unless the big boulder broken up, it cannot be removed from the quarry. The breaking up of the boulders does not involve in any change in the proprieties of the material except changing the size. As such the breaking up of the boulders cannot be construed as processed material. Therefore the assumption of compact block getting out from the leased area to the crushing unit is not tenable which is practically not possible.

With reference to para 15 and 16 it is submitted that the petitioner is liable to pay S. fee or dead rent whichever is higher on all minor minerals dispatched or consumed from the leased area at the rates specified in Schedule I and II as the case may be as per sub-rule (1) of Rules 10 of APMMC Rules 1966. As per the above rule it is very clear that S. fee can be collected on the rough stone or road metal based on grant of quarry lease, as well as lease deed agreement. Since the rule provides the levy of S. fee on the minerals dispatched or consumed as per rates shown in the Schedule I of the APMMC Rules 1966. As per Rule 34 of APMMC Rules 1966, it is stated that no minor mineral shall be dispatched from any of the leased area without valid permits issued by the ADM & G concerned. The lessee shall make an application to the concerned ADM & G in form 'K' informing for the issue of dispatch permits by duly enclosing the challans towards advance payment of S. fee for the proposed quantity to be dispatched. Then the ADM & G shall issue permits in Form 'L' to the petitioner. If the S. fee is paid towards transportation of rough stone from leased area to the crusher on valid permit and on advance payment of S. fee on the strength of the way bills for transportation of rough stone from the quarry to the crusher unit the department will certify so as to avoid recovery of seigniorage fee for ballast supplied to railways. Whereas in this case the petitioner supplied ballast without obtaining dispatch permits.

With reference to par 17 it is submitted that the petitioner has not submitted any revision application under Rule 35-A before the 1st respondent. the contention of the petitioner in the para is not correct.

With reference to para 18 it is submitted that the petitioner has not exhausted the revisional remedy available under Rule 35-A of APMMC Rules 1966. The petitioner ought to have filed a revision application before the 1st respondent under Rule 35-A of APMMC Rules 1966 instead of invoking to this Hon'ble Court highest jurisdiction. Hence, the contention of the petitioner is not correct.

W.P. No.5756 of 2004

81. Robo Silicon Private Limited filed this writ petition praying for writ of Mandamus declaring the action of the respondents in not issuing the transit passes to the petitioner to enable it to dispatch the finished products from its factory to the purchasers is contrary to law, arbitrary, irrational and in violation of the A.P. Mineral Dealers Rules, 2000 and consequently direct the 3rd respondent to issue the transit passes as requested by the petitioner and pass such suitable order.

82. This Court issued Rule Nisi on 26.03.2004 and in WPMP.No.7494 of 2004 notice was ordered and subsequent thereto after several adjournments, on 29.09.2004, this Court made the following order:

> "Heard both sides.
>
> It is represented by the learned Government Pleader appearing on behalf of the respondents that the Government is going to take decision in regard to the subject matter of the writ petitions so requests to matter be posted after one month.
>
> Post all the writ petitions after one month. Meanwhile, there shall be interim direction to issue transit passes as sought for, subject to condition that the petitioner pays the seigniorage fee on the road metal."

83. It is stated that the sand, which is the essential ingredient to the construction activity, emerges by natural process, is a gift of the nature to the mankind. With the multifold increasing demand for sand, there is huge exploitation of the sand from rivers and riverbeds. Because of the indiscriminate exploitation of the sand, there has been irreversible damage that is being caused to the ecology, besides damaging the natural flow of the river systems and depletion of the ground water. More often than not, there were complaints of illegal exploitation of the sand generating resources. Added to it, taking advantage of the demand for the sand, the unscrupulous vendors of sand were mixing spurious fitter sand, which contains high percentage of silt and other harmful chemicals, which affect the structure. Such sand being sold in the market is causing serious concern among the builders and the public. Nonetheless, urgent need is felt to meet the demand for increasing needs of sand.

84. It is submitted that the need for an alternative for the natural sand had engaged the attention of many and because of the emerging technology the alternative for the river sand was sighted. With the use of machinery and technology, a perfect and superior alternative to river sand was made possible and the necessary equipment and technology were made available by Svedala Inc. of Sweden. Under the aforesaid technology, the rough stone is converted into sand for being utilized as a substitute for river sand. The petitioner company invested a sum of Rs.5 crores and had set-up a plant, which is first of its kind in the whole of South India at Ankireddypalli (V), Keesara

mandal, Ranga Reddy District in the year 2000. Since the raw material, which is needed for running the plant is the rough stone and stone material being a minor mineral, the petitioner company obtained a quarry lease from the 4th respondent herein for quarrying the rough stone in Sy.No.434 of Ankireddypalli Village. The rough stone that would be quarried, is being carried to the petitioner's factory and converted into sand by mechanical process and under the mining lease the petitioner was obligated to pay seigniorage charges on the rough stone to the respondents herein before dispatching the material from the quarry in accordance with the A.P. Mineral Concession Rules.

85. It is stated that the 1st respondent herein in exercise of its powers under Section 23 (c) of the Act had made rules called the A.P. Mineral Dealers Rules 2000, hereinafter in short referred to as Rules, with a view to regulate the process, storage, trading, transport of minerals and mineral products and to check the evasion of royalty or seigniorage fee, stopping of illegal mining and quarrying and transportation. Under Rule 3 of the Rules no person other than a mining leaseholder or a person holding valid dealers registration can offer for sale or engage in any transaction in buying and selling of any mineral in any place. Similarly, no person shall transport any mineral from the place of rising or sale to another place without being in possession of valid transit pass. It is submitted that under Rule 6 of the Rules any person desiring to transport or carry away any mineral from any place shall make an application before the concerned Deputy Director of Mines & Geology in accordance with the Rules and on receipt of the said application, the said authority may grant transit passes in Form-G for such period and subject to such terms and conditions. Where the authority refuses to grant transit pass, then the said authority shall record the reasons therefor and communicate the same to the applicant. The transporter is obligated to carry a transit pass and shall produce the same on demand to the authorized officer. Any person contravening the rules is made liable for the penalties mentioned in Rule 8 of Rules. If any person aggrieved by the order of the Deputy Director, Mines and Geology, may appeal to the Director of Mines and Geology within 30 days.

86. It is also stated that since the very object of the rules being to check the evasion of royalty and seigniorage payable and stopping illegal mining, quarrying and transportation, the said rules devised a procedure to regulate the same. At the time when the petitioner is carrying the rough stone from its quarry to its factory for processing, the petitioner is obtaining the required transit forms. Since it is not possible for the authorities under the Act to issue transit forms for each consignment, the dealers were required to obtain transit formbooks on payment of seigniorage from the 3rd respondent herein. Accordingly, the petitioner is making payment of seigniorage charges and

obtaining the transit formbooks duly indicating the approximate quantity of the mineral being transported from the mining area to its factory for processing. After processing the rough stone in its factory, the petitioner is obtaining its final product of sand. It is submitted that under Schedule-I of A.P. Mines Mineral Concession Rules 1966 the seigniorage fee in respect of rough stone shall be calculated and paid on the basis of volume i.e., cubic metres only. Since the rough stone of different sizes are being brought to the processing plant, it is difficult to arrive at the volume of each stone or load by volumetric measurement, since volumes differ depending on the size and shape of the rough stone. As the seigniorage fee is to be paid only for the mineral actually quarried and as it is not possible to measure each stone, the petitioner is weighing the consignment and converting the same into volume by adopting internationally accepted method of conversion. To avoid ambiguity, the petitioner company got the rough stone from its quarry analyzed for its specific gravity by Jawaharlal Nehru Technological University, Hyderabad and paying the seigniorage fee accordingly.

87. It is further averred that consequent upon the conversion of the rough stone into sand, the same need to be transported to various purchasers as per their requirement. The purchasers of sand would place the order on the petitioner depending on their requirement and accordingly the petitioner is transporting the sand to the purchasers on a transit pass. Under the Rules, the transporting vehicle shall carry the transit pass issued for the purpose. Since it is not possible to approach the authorities for issuance of a transit pass every time, the authorities had devised a method, whereunder if the petitioner obtained 100 transit forms by paying the seigniorage fee on the rough stone, the 3rd respondent is issuing equal number of transit passes to enable the petitioner to dispatch its final products which are being utilized for transport of the sand. Whenever the petitioner is falling short of transit passes it is approaching the 3rd respondent, who on verification of the records was issuing additional transit passes. At the end of each month/quarter, the petitioner is submitting the particulars of the mineral extracted and transported to the factory for processing and the quantity of the sand produced. After satisfying about the same, the 3rd respondent is issuing additional transit passes for the balance quantity. This procedure adopted by the 3rd respondent went on well till July 2003. Subsequently, the 3rd respondent refused to issue additional transit passes for the balance quantity and his office is insisting that he will issue only equal number of transit passes equivalent to the transit forms issued. In such circumstances the petitioner made representations to the 3rd respondent dated 22.08.2003 and 04.09.2003 bringing to his notice the difficulties faced and requested for issuance of transit passes. Having no other alternative and as the 3rd respondent's office did not respond properly and as the finished material is lying in the premises, the petitioner is constrained to obtain the transit

form by payment of seigniorage fee without need and is obtaining equal number of transit passes for transporting the finished product. The petitioner made a representation dated 04.11.2003 and a copy of which is sent to the 2nd respondent herein highlighting its problems and also the fact that the petitioner company is being forced to pay seigniorage fee for obtaining additional transit passes and had requested the 2nd respondent to advise the 3rd respondent to issue the additional transit passes, but nothing had transpired. Instead of issuing additional transit passes, the 3rd respondent had issued a notice dated 26.12.2003 stating that the petitioner company is mentioning the quantities furnished and materials dispatched in kilograms instead of cubic meters, which may lead to confusion and called upon the petitioner to mention only the volumetric quantity as against the weight. The petitioner by its letter dated 09.02.2004, brought its problems again to the notice of the 3rd respondent and had requested for release of additional transit passes while accepting the directive. This is followed by another letter dated 24.02.2004 and requested for a reply, but nothing had transpired. The petitioner was forced to pay seigniorage fee for obtaining transit passes in view of the practice developed by the office of the 3rd respondent which is issuing only equal number of transit passes to the transit forms obtained. This insistence is placing on a higher financial burden on the petitioner and in fact the petitioner had already paid a sum of Rs.2 lakhs for purchase of transit forms. It is already brought to the notice of the 3rd respondent that the dispatches of the finished material to the factory are as per the requirement of the purchaser. It is not necessary for a purchaser to place an order equivalent to the volume/capacity of the vehicle carrying the finished material. Though a lorry is capable of carrying 6 cubic metres of sand, if the customer places an order for a lesser quantity, the petitioner will sell the required quantity only. This is resulting in shortage of transit passes which problem is within the knowledge of the respondents. They are not prepared to issue additional transit passes. Since the inaction of the respondents is causing financial loss to the petitioner, the petitioner is constrained to file this writ petition raising certain grounds praying the relief referred to supra.

88. In the counter-affidavit filed by the respondents while answering to the allegations it is stated that M/s. Robo Sillicon Private Limited - the petitioner herein had been issued transit passes for dispatch of finished material by duly following the procedure as laid down in A.P. Mineral Dealer Rules, 2000. Since Registration of the petitioner as “Mineral Dealer” with the Deputy Director of Mines and Geology, Hyderabad, 3rd Respondent herein, petitioner had been issued 19,544 number of transit passes from registration i.e. from 27.09.2001 to till date i.e. up to 01.04.2004. However the Petitioner’s contention of not issuing transit passes for dispatch of finished goods is

totally incorrect and specifically denied. It is stated that the Petitioner is put to strict proof of these allegations.

89. It is also averred that the Petitioner had been granted a quarry lease Stone and Metal in Sy.No.434 of Ankireddypalli Vilage, Keesara Mandal, Ranga Reddy District vide Proceedings NO.787/RR/Q/2000 dated 28.04.2000 by the 3rd Respondent over an extent of 1.00 hect. for a period of 10 years. The quarry lease deed was executed by the Petitioner on 15.09.2000 and the said quarry lease will be in force up to 14.09.2010. The Petitioner established a crushing unit near the quarry lease for manufacture of 'crushed sand' and selling the product by brand name 'Robo Sand'. The Petitioner registered the crushing unit as dealer under A.P. Mineral Dealer Rules, 2000 on 27.09.2001 vide Registration No.3450/MDR/RR/01 dated 27.09.2001. The Petitioner firm is doing quarrying in the granted lease area by feeding raw material from the quarry to the stone crusher. The mechanical process result in various sizes of metal and sand, which the petitioner stores in the premises, and the same will be dispatched to various customers.

90. It is averred in paras 6 to 11 as hereunder:

> "With reference to para 6, it is submitted that the Petitioner is being issued dispatch permit for transport of raw material from the quarry to the processing unit on payment of Seigniorage Fee in advance by the Assistant Director of Mines and Geology, Hyderabad, the 4th Respondent herein. The dispatch permit is being issued as per Schedule-1 Rule 10 of APMMC Rules, 1966 on the basis of Volume in Cubic Meters only. Similarly for the finished product, the Petitioner is being issued transit passes on the basis of volume i.e. in cubic metres. The Petitioner taking the support of a certificate issued by Jawarharlal Nehru Technological University, Hyderabad which states that the bulk/solid rock density of the raw material as 2.64, is converting the raw material weighment into volume by multiplying the tonnage with 2.64. The solid rock density certified by J.N.T.U., Hyderabad cannot be accepted as far a the imposition of seigniorage fee as per Rule 10 of the A.P.M.M.C.Rules, 1966. In similar circumstances of the case the report of Andhra University in case of Analytical report of Earth, Gravel and Morrum was not accepted by the Division Bench in W.P.NO.6916 of 2002 and batch dt.09.01.2003 reported in 2003(1) ALD 643. The Petitioner is excavating loose fragments of various sizes from the quarry after blasting the sheet rock and hence the solid rock density of 2.64 and calculation of consequent volume is not permissible as per A.P.M.M.C. Rules, 1966. Further it is submitted that for all practical purposes the volume of the vehicle carrying the material is taken as actual volume of material dispatched. After noticing the new method of arriving at the volume using ht solid rock density factor of 2.64, the Deputy Director of Mines and Geology, Hyderabad the 3rd Respondent and 4th Respondent Assistant Director of Mines and Geology, Hyderabad inspected the quarry and stone crusher of the Petitioner on 27.08.2003 and noticed excess quantity of raw material dispatched through specific gravity method instead of volumetric method. However, to verify the procedure being followed by the Petitioner and to ascertain the facts, a series of weighments and measurements of the vehicles transporting raw material from the quarry to the processing unit have been recorded and found that the average density of loose raw material transported from the quarry tot eh processing unit is 1.53 but not 2.64 as claimed by the petitioner. By misrepresenting the facts, and taking the advantage of solid rock density the petitioner is trying to encash the advantage and insisting for more Transit Passes for which Seigniorage Fee is not covered. Further, the Assistant Director of Mines and Geology, Hyderabad the 4th Respondent examined the entire dispatches of raw material by the Petitioner from the quarry to the stone crusher since inception of

the quarry operation to 23.2.2004 and issued Letter No.354/M2/2000, dated 18.3.2004 raising demand for payment of Rs.25,08,513/- towards differential Seigniorage Fee for excess volume of material dispatched 76,015.33 M3 after issuing notices on 07.08.2003 & 11.09.2030, since the petitioner having acknowledged the notices, has not given any reply nor paid any demanded amount of Rs.25,08,513/- till date. Thus it is clearly evident that the petitioner by misrepresenting facts is seeking additional transit passes, which cannot be considered under AP Mineral Dealer Rules, 2000. Therefore the contention of the petitioner that the conversion factor is internationally accepted is not correct and not fitting within the provisions of M & M (D&R) Act, 1957 and A.P.M.M.C.Rules, 1966.

With reference to para 7, it is submitting that the 3rd respondent herein is issuing required Transit passes to the petitioner after ensuring that the Seigniorage Fee is paid to the Government for the quantity of raw material dispatched from the quarry as per APMMC Rules, 1966 and APMD Rules, 2000. The contention of the petitioner that he is paying additional Seigniorage Fee for obtaining additional Transit passes is totally wrong. The seigniorage fee shall have to be paid on the raw material excavated from the quarry and transported to the stone crusher. The Transit Passes will be issued based on the seigniorage fee paid on the raw material and finished material so produced. Under any circumstances the finished material shall not exceed the quantity of actual raw material utilized. Hence the issue of additional Transit Passes for the finished product is not permissible under rules. The petitioner is at liberty to obtain Transit Passes of variable quantities depending upon the market requirement but, the total quantity shall not exceed the quantity of raw material for which Seigniorage fee is paid. Therefore it is submitted that the petitioner is time and again using the concept of solid rock density and misleading by stating that he requires more transit passes than the actual raw material consumed. The petitioner is trying to obtain more transit passes without payment of seigniorage fee to the Department and insisting for issue of more number of transit passes for irrelevant quantity of mineral for which Seigniorage fee is not covered. The 3rd respondent herein issuing Transit passes to the petitioner in accordance with the rules after careful examination of raw material receipts and dispatches of finished material, and ensuring the payment of seigniorage fee on raw material.

With reference to Ground (a), it is submitted that the 3rd respondent never refused to issue Transit Passes to the petitioner and issued Transit Passes in tune with the seigniorage fee paid on the raw material.

With reference to grounds (b) & (c), it is submitted that for issue of Transit Passes the petitioner shall have to produce the evidence of payment of Seigniorage fee on the raw material consumed. The petitioner adopted his own procedure of converting the tonnage into volume by using the solid rock density factor which is not permissible under the APMMC Rules, 1966 and APMD Rules, 2000 where the rates of Seigniorage fee fixed on volumetric basis. The petitioner cannot insist more transit passes than the actual quantity of raw material consumed. It amounts illicit quarrying only. Therefore the petitioner was issued Demand Notice for Rs.25,08,513/- on 18.03.2004 after due notice to the petitioner and the same is pending. In order to evade he same now this Writ Petition is filed.

With reference to Ground (d), it is submitted that as submitted supra, the Transit Passes are being issued to the petitioner based on the quantity of raw material consumed for which seigniorage fee has been paid. The petitioner is at liberty to transport the finished material by any means but ht e total quantity of finished material transported shall have to tally with the actual raw material consumed. The volume of the vehicles transporting the mineral is taken as the volume of mineral for all practical purposes. The concept of converting the net weighment of the mineral into volume by using so called solid rock density cannot be considered.

With reference to grounds (e&f), it is submitted that communicating in writing for non issue of Transit Passes does not arise as the 3rd respondent is issuing transit passes to the petitioner regularly in tune with the raw material

consumed for which seigniorage fee is paid till 01.04.2004."

W.P.No.14077 of 2006

91. M/s. Rock Sand Minerals, the writ petitioner, filed this writ petition praying for a relief of writ of Mandamus declaring the action of the respondents in demanding payment of seigniorage fee on the quantity of Rock sand and aggregates (processed mineral) supplied when the unprocessed mineral has suffered seigniorage fee prescribed as per Rule 10 of A.P. Minor Mineral Concession Rules, 1966 as arbitrary, illegal, unconstitutional and consequently direct the respondents to assess and collect seigniorage fee on the excavated and dispatched minerals as per Rule 10 of APMMC Rules 1966 and pass such suitable orders.

92. This Court issued Rule Nisi on 17.07.2006 and in WPMP.No.17550 of 2006 the following order was made:

> "G.P. for Industries takes notice.
>
> It is stated by Government Pleader for Industries that by virtue of G.O.Ms.No.217, dated 29.09.2004, it is doubtful whether the same interim orders which had been passed in the prior matters be passed in these matters or not. However, to further make his submissions, learned counsel requests time and also had brought to the notice of this Court that the batch is coming on 20.07.2006.
>
> List WPMP in the motion list on 20.07.2006."

93. It is stated that the petitioner is a limited company registered as M/s. RockSand Minerals (P) Limited, under the Companies Act, in the year 2002, and is a pioneer in manufacturing and marketing the concept of Rock Sand as a substitute to River Sand engaged in the activity of Manufacturing, promoting the concept and selling of Rock Sand and shaped aggregates in the respective markets. It is further stated that the petitioner was granted quarry lease by the Deputy Director of Mines and Geology in over an extent of Acs.15.00 in Sy.No.248 of Bandamadaram Village, Medichal Mandal, Ranga Reddy District for a period of 10 years vide proceedings No.306/RR/Q/03, dated 10.01.2003; and in an extent of Acs.8.00 in Sy.No.248/1, Bandamadaram Village, Medichal Mandal, Ranga Reddy District, for a period of 10 years, vide Proc.No.307/RR/Q/03, dated 10.01.2003; and also in an extent of 19.8 Hects. in Sy.No.345 of Girmapur Village, Medichal Mandal, Ranga Reddy District, for a period of 15 years in Proc.No.3851/5/04, dated 17.01.2006. It had established a crusher unit. The rough stones/Road Metal/Spolls were processed into the crushing unit converting them into Rock Sand and aggregates by crushing and marking the same. It is also stated that for the said purpose, it had been obtaining permits in compliance of Rule 34 of the Rules, 1966. The seigniorage fee is chargeable on Minor Mineral dispatched or consumed from the land at the rates specified as per Rule 10 of Rules, 1966. Rules 10 and 34 of the Rules are referred to.

94. It is also stated that rough stone/boulder/road metal or raw mineral which are removed (excavated in the quarry) are transported on payment of Seigniorage Fee with a valid permit issued by the office to its crushing unit at a different place for undergoing the process of crushing and converting into Rock Sand and aggregates.

95. It is averred that surprisingly the Assistant Director of Mines and Geology, who is in receipt of the seigniorage fee of the unprocessed mineral (Boulders, Rough Stone/Road Metal) after its excavation for movement to the petitioner's crusher nearby, had been demanding seigniorage fee for the processed mineral transported. Further, the unprocessed material had in fact undergone variation due to the process of crushing at the crusher, and the processed material incorporated in the work area and compacted as per specifications will have the same measurement as that of the unprocessed material consumed from the leased land. The material thus incorporated is measured and paid. It was brought to the notice of the officer about the judgment of the Apex Court wherein it was held that royalty or Seigniorage fee is payable by the lessee on unprocessed mineral to the State and not on the quantity of processed minerals and it is payable only at the quarry site.

96. It is averred that according to proven physical laws, there is volume variation between the quantity of material actually removed from the quarry in the shape of big stones (for which seigniorage fee has to be paid under APMMC Rules, 1966 as mentioned above) and the quantity of metal in the shape of small pieces after processing by crusher. This variation is due to the fact that a large piece of stone measuring say one cubic meter of solid volume as measured at quarry when converted into small stones either by breaking or crushing and heaped would measure about 1.50 cum to 1.60 cum depending on the size and shape of small pieces into which it was broken. Large sizes of pieces of stones and irregular sizes will have larger voids thereby increasing the volume. The resultant higher volume is due to the voids or empty spaces that develop in between the heaped up small stones, depending on their sizes and shapes. The measurement at quarry is in solid volume or in bank measure, and in the processing by crusher the volume is no longer called solid volume due to presence of voids. This reckoning of volumes is a well-established standard engineering practice based on laws of physics and is not a matter for any exercise of discretion by any authority. The inflated volume is a mere illusion, and the volume changes according to the void ratio. Thus, the measurement of minor mineral consumed from the land is in solid volume of the unprocessed mineral for which only seigniorage is applicable.

97. It is also averred that from the above proposition it is seen that the volume of a

large stone measured one cum when converted into Rock Sand and aggregates and stacked and loaded into vehicles would measure varyingly upto about 1.60 cum due to voids occurring between the small stones. Now, if the stone of one cum solid volume is weighed and compared with the weight of the total quantity of (1.60 cum) Rock Sand manufactured from this, both would be identical. In other words, the inflated volume of small stones is a mere illusion as established by weighment method, since voids are mere empty spaces, which have no weight.

98. It is stated that in spite of bringing these facts to the notice of the Assistant Director of Mines and Geology, by force and coercion the authorities demanded the petitioner to pay Seigniorage fee on the basis of volume of processed material transported though the petitioner paid seigniorage fee for the quantity of unprocessed rough stone already. No notice was given in writing to that effect but the vehicles were not permitted to move without payment of the Seigniorage fee for the second time.

99. It is asserted that as per the scheme of the Act and the Rules Quarry Leases are granted on payment of Royalty/Seigniorage fee as fixed and Mineral from the quarry site is transported. Whatever be the right of the Government over the underground minerals, when once the lease is granted and Royalty/Seigniorage fee is paid by the lease holder to the Government and the Mineral extracted, the ownership of the mineral extracted passes on from the Government to lease holder and for all purposes he will be deemed to be the owner. Once the leaseholder becomes owner of the property any control or interference, not provided for in the Act or Rules amounts to violation. No power is conferred on State Government under the Act to exercise control over minor minerals after they have been excavated and Royalty/Seigniorage paid for the material so consumed from the land.

100. It is also asserted that Royalty or seigniorage fee had to be assessed on the basis of solid volume of the mineral but not on the basis of material supplied to end-user. Royalty is payable by the lessee on unprocessed mineral to the State and not on the quantity of processed mineral. Any assessment basing on the volume supplied and demanding Seigniorage fee on that basis of the mineral which had suffered Seigniorage fee at the basic point is arbitrary and illegal.

101. It is stated that in spite of bringing to the notice of the authorities the charges in volumes due to voids the respondents had been demanded the Seigniorage fee on such changes of volumes. The action was arbitrary, illegal, unjust, unconstitutional and contrary to Rules. The Seigniorage fee had to be paid as per Rule 10 and on the crushed material supplied to the enduser. As per instructions, the petitioner had also registered under A.P. Mineral Dealers Rules, 2000. The transportation is accompanied

by the permit issued by the Assistant Director of Mines and Geology and a transit pass issued by Asst. Director under the Rules. It had not indulged in any illegal activity. In spite, the Assistant Director of Mines and Geology was insisting to pay.

102. It is also stated that it was also brought to the notice of the Department that technical references relating to changes in volumes etc., are very much relevant and have to be agreed to at any stage. It was also brought to the notice that the lease deed and agreement between the department and the petitioner are not in conflict with the A.P.M.M.C. Rules, 1966. The technical references made by the petitioner will be held with the Department to implement the Rules. Quantity of metal as supplied to enduser cannot be taken into account and only the solid volume of stone/boulders removed from the quarry in terms of A.P.M.M.C. Rules, 1966 have to be taken into account for assessing the Seigniorage fee. But the respondents did not pay any heed and is proceeding with the collection of Seigniorage fee in terms of measurement of processed material and interfering with the transportation. The Assistant Director cannot demand the seigniorage fee on the finished product where the mineral had already suffered Seigniorage fee. Unless this Court intervenes and issues appropriate directions, the petitioner will suffer great hardship and irreparable loss. It is further stated that under similar circumstances this Court had clarified and passed orders that “Collection of Seigniorage fee on the basis of volumetric analysis on condition of petitioner producing proof of seigniorage fee already paid on the boulders quarried on the premises in respect of which it has been granted a quarry lease. As the petitioner was not holding a similar order the transportation was interrupted due to which the work was getting delayed, causing loss and hardship to the petitioner. In such circumstances the writ petition is filed.

103. A counter-affidavit in detail is filed taking specific stand that the respondents are competent under Rule 6 of the A.P. Mineral Dealers Rules 2000 and no person shall transport or dispatch the process material without transit passes issued by the Assistant Director, Mines and Geology concerned.

104. It is stated that the petitioner company was granted (3) quarry leases for stone & metal. The details of leases are given below:

S. No.	Location	Dy. Director of Mines & Geology, Hyd grant Proceedings	Asst. Director of Mines & Geology, Hyd execution Proceedings	Lease period
1	Sy.No.248 Bandamadaram (V), Medchal Mandal Ext:Ac.15.0	306/RR/Q/03, dt:09-04-2003	5842/M2/2002, dt:09-04-2003	09-04-2003 to 08-04-2013
2	Sy.No.248/1, Bandamadaram (V), Medchal Mandal, Ext:Ac.8.0	307/RR/Q/03, dt:10-01-2003	5325/M2/2002, dt:09-04-2003	09-04-2003 to 08-04-2013

3	Sy.No.345, Girmapur Village, Medchal Mandal, Ext:19.80Hects	5183/Q-II(1)/05, dt:25-10-2005	3851/S/2004, dt:17-01-2006	17-01-2006 to 16-01-2021

105. It is further submitted that the petitioner established a stone crushing unit near the leased area and manufacturing rock sand and other aggregates.

106. It is also stated that the seigniorage fee is charged on the quantities of extracted and dispatched from the quarry. The contention of the petitioner that the un-processed mineral will under go only variation of size and shape during crushing very much correct. The arguments of the petitioner stating that if the crushed/processed mineral is re-dumped in the quarry and compacted, it will have same measurements is highly imaginary, arbitrary and far away from truth.

107. It is averred that there will be no volume/tonnage variation of the mineral before crushing and after crushing. It is submitted that as per Rule 10 of AP Minor Mineral Concession Rule, 1966, the petitioner had to pay seigniorage fee on the minor minerals at the time of dispatch from the leased areas either on Volumetric basis/Tonnage basis as per the rates of seigniorage fee fixed by the Government under G.O.Ms.No.217, dt:29-09-2004.

108. The seigniorage fee is not paid on the insitu rock but the petitioner by use of explosives or other mechanism break the insitu rock into small pieces and load into trucks to be transported to the stone crusher. It is practically impossible to transport $1M^3$ solid rock boulder from the quarry to be fed to the stone crusher. No body will resort to such things as production cost will be increased tremendously.

109. The leases granted for granite useful for cutting and polishing under Rule 12(5) of AP.Minor Mineral Concession Rules, 1966 alone will resort for exploitation of such huge blocks, which will yield good profits in the international as well as domestic market. In the instant case, the leaseholder exploiting the mineral in the form of small boulders and removing them from quarry site to stone crusher. It tantamount to misuse of the mineral in violation of grant order and lease deed conditions. As such to save seigniorage fee component and cost component the lease-holders are reducing the sizes within the lease hold area and feeding into crusher. The seigniorage fee is being levied on the dispatches of the lease-holder from the quarry. The quarry lease is granted for stone & metal/road metal, but not as rock boulders etc. Though there may be variation in Volumetric measurement depending on the sizes of the boulders transported from the quarry, but the Department will collect seigniorage fee on the dispatches of the lease-holder from the quarry area. The crushing of boulders will not involve in any change in the properties of the mineral except changing the size and shape. It is further submitted

that under any circumstances the stone aggregates resulted in crushing will not be more than the raw material fed to the crusher. The so called voids mentioned by the petitioner will be present both on the raw material transported to the crusher and stone aggregates produced after crushing. The percentage of voids decreases when the size of the stone decreases. As such the stone aggregates appear to be less due to presence of less voids. The contention of the petitioner that the aggregates produced after crushing when heaped appear more is totally wrong.

110. Further, it is submitted that as per the procedure in vogue in all the Engineering Departments of both Central and State Governments, the seigniorage fee is being deducted from the bills of the contractors on the quantities of minor minerals actually utilized in the construction. The seigniorage fee is not being deducted on the insitu rock removed and transported by the lease-holder. The contention of the petitioner stating that the volume will be inflated after crushing is a standard practice based on laws of physics is wrong and far from truth.

111. It is further stated that though the finished product after crushing appears to be inflated but the weight of the mineral before and after crushing remains the same as the voids are
weightless empty spaces. It is very much true, the petitioner is having an option to pay the seigniorage fee on the minor minerals dispatched from the quarry in tonnage basis as envisaged in G.O.Ms.No.217, dated 29-09-2004.

112. In the said G.O the seigniorage fee on rock boulders/road metal is fixed as Rs.45/- per M^3 or Rs.30/- per MT. The petitioner is at liberty to pay the seigniorage fee at Rs.30 per MT from the material extracted and transported from the quarry. As such the so called voids without weight in the raw material is nullified. The petitioner misunderstanding the payment of seigniorage fee on tonnage basis and filed the present writ petition and misleading this Court.

113. It is further stated that the Asst. Director of Mines & Geology, Hyderabad i.e., respondent No.3 never demanded the payment of seigniorage fee on the finished/processed material. The respondents are having full authority under Rule 6 of A.P Mineral Dealers Rules, 2000 to insist upon transit pass for transportation of finished mineral. In this connection, it is submitted that the respondent No.3 herein vide Lr.No.3724/MDR/2005, dated 14-07-06 issued letter to the petitioner calling for explanation on certain discrepancies with regard to the transport of finished material from the stone crusher of the petitioner. The petitioner is mentioning both volume and tonnage on the form 'E'/Transit pass issued while dispatch of finished material. The petitioner for

every transport 2.64MT of processed mineral mentioning as $1M^3$ less of voids. As such in the said letter the petitioner was asked to explain the meaning of "Less of voids" which is not there either in AP Minor Mineral Concession Rule, 1966 or AP Minerals Dealers Rules-2000. The relation between the Volume and Tonnage had been clearly mentioned in the schedule rates of seigniorage fee under Rule 10 of AP Minor Mineral Concession Rules, 1966 in G.O.Ms.No.217, dated

29-09-2004. The relation is 1:1.5 i.e., $1M^3$=1.5MT where as the petitioner is transporting the finished mineral in his own relation of $1M^3$=2.64MT.

114. Therefore, the differential tonnage, volume and seigniorage fee had been calculated as per the returns/surrendered used Transit Passes produced by the petitioner from 01-01-06 to

09-06-06 as detailed below:

Period of Dispatches	Quantity Dispatched (M^3)	Tonnage mentioned (MT)	Actual Tonnage (MT)	Differential Tonnage (MT)	Differential Volume (M^3)	Differential seigniorage fee (Rs)
01-01-06 to 09-06-06	61392.511	162076.229	92088.767	69987.463	46658.308	2099624

a) In the above table the petitioner obtained the transit passes in volume and transported the finished material in tonnage by using the relation 1M3=2.64 MT. The solid density of stone is 2.64 MT which is applicable to insitu rock. The petitioner used the solid density of 2.64 to the dispatches from the quarry/stone crusher which are not insitu rock but small pieces of various sizes of stone. The lease granted to the petitioner is not insitu rock but stone and metal. The petitioner is allowed to transport only the stone and metal i.e., small boulders of stone under the lease deed conditions and A.P. Minor Mineral Concession Rule, 1966. As such the 2.64 solid density of insitu rock factor does not apply to the dispatches of the petitioner.

b) The dispatches of petitioner are in form of small rock boulders from quarry to crusher. The relation of volume : tonnage i.e., 1M3-1.5MT applies to the petitioner. The relation of 1M3=1.5MT of small boulders of rock had been proved in various studies and as such included in the G.O.Ms.No.217, Industries and Commerce (M1) Department, dated 29.09.2004.

c) As such based on the volume mentioned by the petitioner on the transit passes, the actual tonnage i.e., 1M3-1.5MT had been calculated.

d) The differential tonnage had been arrived by deducting the tonnage mentioned by the petitioner on the transit pass and the actual tonnage.

e) The differential tonnage had been converted into volume by the relation

1.5MT=1M3 which is envisaged the G.O.Ms.No.217, dated 29.09.2004.

115. The petitioner without giving any explanation in the matter, preferred the present writ petition before this Court. The petitioner is having remedy of appeal as per Rule 11 of A.P. Minerals Dealers Rules 2000 before the concerned authorities. Without exhausting the options, preferred the writ petition.

116. It is also stated that the petitioner is liable to pay the seigniorage fee or dead rent whichever is higher as per lease deed conditions executed by him. After execution of the lease deed, the person will become lessee to the Government. Under Rule 20 of AP Minor Mineral Concession Rule, 1966, the lessee has the right to quarry, carry away, sell or dispose minor minerals or minerals specified in the lease deed with in the frame work of AP Minor Mineral Concession Rule, 1966. Under no circumstances the lessee will become owner of the leasehold area. The respondents are having every authority under Rules to inspect the leasehold area, check, take measurement and take action if any violations are noticed.

117. It is stated that in addition to as mentioned in reply to para No.8 the respondents also have authority under Rule 26 of AP Minor Mineral Concession Rule, 1966 to call for documentary evidence of payment of seigniorage fee on the finished/processed mineral. If any discrepancies/violations are noticed, the respondents have authority to penalize under Rules. The finished/processed mineral is nothing but the extracted raw material only with some changes in shape and size. As such there should not be any discrepancy between the raw material and finished material. If such discrepancies arise, liable for penalization.

118. It is also further stated at para 10 as hereunder:

> "In reply to para No.11 and 12 it is respectfully submitted that as mentioned in pre paras there will not be any change in either volume/tonnage after crushing of the minor minerals. The petitioner had been registered as Dealer under AP Minerals Dealers Rules-2000 vide registration No.1236/MDR/04. The petitioner is obtaining the mineral Dealer Transit Passes i.e., Form 'E' for transport of finished material from the stone crusher. The Dealer surrenders the seigniorage fee paid transit forms and obtains Transit Passes for the transport of finished material. The Transit Passes will be issued for the same quantity as that of the surrendered seigniorage fee paid transit forms. The petitioner was also being issued the Transit Passes in the same fashion. The petitioner is deceiving the Government by transporting 2.64MT of finished material for every M^3 of seigniorage fee paid raw material. Moreover he is mentioning that the material is "Less of voids". Thereby the petitioner is also deceiving the consumer as it is practically impossible to remove voids from the material.
>
> Further it is submitted that the petitioner himself has agreed that there will not be any change in weight of the mineral before and after processing. Keeping all the factors in consideration the Government has included the option of paying seigniorage fee in tonnage. The petitioner though fully aware of the provisions made in the Rules, resorting to illegal practices and avoiding the payment of seigniorage fee to the Government. The petitioner coined his own terminology i.e.,

"Less of voids" and deceiving the Government and his consumers.

It is further submitted that the Department of Mines & Geology recently conducted a field study to know the volume/tonnage variations due to crushing of stones and boulders. The Director of Mines & Geology, Hyderabad i.e., respondent No.2 herein vide Memo.No.2237/MR2/2005, dt:26-02-2005 constituted a Technical Committee to study the Volumetric/Tonnage variation due to crushing by experimenting the exercise in the field by selecting a stone crushing unit in Ranga Reddy District. The team comprises of the following.

1. Deputy Director of Mines & Geology, Hyderabad
2. Senior Faculty from College of Civil Engineering, JNTU, Hyderabad.
3. Asst. Director of Mines & Geology, Nalgonda.
4. Asst. Director of Mines & Geology, Hyderabad
5. Mandal Revenue Officer of concerned Mandal.
6. President, AP Stone Crusher Owners Association.
7. Quarry owners whose unit selected for the study.

Accordingly, the Committee conducted field study on 28-05-06 quarry and crusher facility of M/s Larsen & Toubro Ltd located in Sy.No.12 of Jawaharnagar Village, Shameerpet Mandal, Ranga Reddy District. The field study reveled the following conclusions.

1. The ratio of Volume Vs Tonnage of raw material which feed to the stone crusher is 1:1.56 i.e., $1M^3$ = 1.56MT.
2. The ratio of Volume Vs Tonnage of finished/processed material after crushing is 1:1.55 i.e., $1M^3$ = 1.55MT of finished/processed material.
3. The ratio of raw material Vs finished material is 1:0.95 or approximately 1:1 i.e., $1M^3$ of raw material yields 1M3 of finished material or 1Mt of raw material yields 1MT of finished material.
4. There is no increase from raw material to finished material in terms of Volume/Tonnage which confirms that matter cannot be created or destroyed but only change in physical form occurs.
5. The decrease in finished material if at all occurs due to spillage during collection of finished material from the stone crusher or lost due to emission of dust. The loss is negligible."

WP.No.14030 of 2006

119. M/s. Rank Silicon Private Limited, the writ petitioner, filed this writ petition praying for a relief of writ of Mandamus declaring the action of the respondents in demanding payment of seigniorage fee on the quantity of Rock sand and aggregates (processed mineral) supplied when the unprocessed mineral has suffered seigniorage fee prescribed as per Rule 10 of A.P. Minor Mineral Concession Rules, 1966 as arbitrary, illegal, unconstitutional and consequently direct the respondents to assess and collect seigniorage fee on the excavated and dispatched minerals as per Rule 10 of APMMC Rules 1966 and pass such suitable orders.

120. This Court issued Rule Nisi on 17.07.2006 and in WPMP.No.14030 of 2006 the following order was made:

"G.P. for Industries takes notice.

It is stated by Government Pleader for Industries that by virtue of G.O.Ms.No.217, dated 29.09.2004, it is doubtful whether the same interim orders which had been passed in the prior matters be passed in these matters or not. However, to further make his submissions, learned counsel requests time and also had brought to the notice of this Court that the batch is coming on 20.07.2006.

List WPMP in the motion list on 20.07.2006."

121. The averments made in the affidavit filed in support of this writ petition is similar to the averments made in the affidavit filed in support of W.P.No.14077 of 2006 except the survey numbers, extent of land and their location.

122. The counter-affidavit filed by the respondents is substantially on the same grounds as referred to in the counter-affidavit filed in WP.No.14007 of 2006.

WP.No.13746 of 2006

123. M/s. Jyothi Constructions Private Limited, the writ petitioner, filed this writ petition praying for a relief of writ of Mandamus declaring the action of the respondents in demanding payment of seigniorage fee on the quantity of Rock sand and aggregates (processed mineral) supplied when the unprocessed mineral has suffered seigniorage fee prescribed as per Rule 10 of A.P. Minor Mineral Concession Rules, 1966 as arbitrary, illegal, unconstitutional and consequently direct the respondents to assess and collect seigniorage fee on the excavated and dispatched minerals as per Rule 10 of APMMC Rules 1966 and pass such suitable orders.

124. This Court issued Rule Nisi on 17.07.2006 and in WPMP.No.13476 of 2006 the following order was made:

> "G.P. for Industries takes notice.
>
> It is stated by Government Pleader for Industries that by virtue of G.O.Ms.No.217, dated 29.09.2004, it is doubtful whether the same interim orders which had been passed in the prior matters be passed in these matters or not. However, to further make his submissions, learned counsel requests time and also had brought to the notice of this Court that the batch is coming on 20.07.2006.
>
> List WPMP in the motion list on 20.07.2006."

125. It is stated that the petitioner is the contractor who supplied ballast to the South Central Railway. The petitioner was awarded various works and entered into agreement for supply of the same. The agreement was entered vide agreement No.16/CAO/C/SC/2006, dated 28.02.2006. The work is supplying and stacking of 50 mm guage machine crushed clean hand angular and durable stone ballast along the side of the property alignment from Ch.35525 to Ch.83760 m between Karimnagar and Jagityal Stations.

126. It is also stated that the petitioner was granted quarry lease for stone and metal by the department of Mines and Geology by the Deputy Director of Mines and Geology vide Proc.No.2565/S/2003, dated 15.12.2003. Lease deed was executed in Form on 15.12.2003. The petitioner had established a crusher. The rough stones are processed into the crushing unit converting them into ballast by crushing and supplying the ballast to the South Central Railway. It is also submitted that for the said purposes the petitioner

had been obtaining permits in compliance of Rule 34 of the Rules. The seigniorage fee is chargeable on minor mineral dispatched or consumed from the land at the rates specified as per Rule 10 of the Rules. Rules 10 and 34 of the Rules had referred to.

127. It is averred that the word road metal/ballast is an usage. The rough stone/boulder/road metal or raw mineral which removed (excavated in the quarry) are transported on payment of seigniorage fee with a valid permit issued by Mines Department to its crushing unit for under going the process of crushing and converting into small stones (ballast) which is supplied to the Railway. The ballast is merely a processed mineral. These small stones used by the railways are called as ballast, for formation of road called as road metal and for construction activities called as Kankar, Chips and aggregate.

128. It is also averred that surprisingly the Assistant Director of Mines and Geology who is in receipt of the seigniorage fee of the unprocessed mineral (boulders, rough stone/road metal) after its excavation for movement to the petitioner's crusher nearby, had been demanding seigniorage fee for the processed mineral (ballast) supplied to the railway. The unprocessed material had in fact undergone variation due to the process of crushing at the crusher. The processed material supplied to the railway was measured by volumetric method and paid for by railways. It was brought to the notice of the officers that as per the judgment of the Apex Court royalty or seigniorage fee is payable by the lessee on unprocessed mineral to the state and not on the quantity of processed minerals and it is payable only at the quarry site.

129. In is further averred that according to proven physical laws, there is volume variation between the quantity of material actually removed from the quarry which was in solid and compact state in the shape of big stones (for which seigniorage fee had to be paid under Rules as mentioned above) and the quantity of metal in the shape of small pieces after processing by crusher. This variation is due to the fact that a large pieces of stones measuring say one cubic meter of solid volume when converted into small stones either by breaking or crushing and heaped would measure about 1.82 cum as voids form between each stone thereby increasing the volume. The resultant higher volumes are due to the voids or empty spaces that develop in between the heaped up small stones, depending on their sizes and shapes. The measurement at quarry was in solid volume or in bank measure and in the processing by crusher the volume is no longer called solid volume due to presence of voids between the small stones heaped. This reckoning of volumes is a well established standard engineering practice based on law of physics and is not a matter for any exercise of discretion by any authority. The inflated volume is a mere illusion, and the volume changes according to the void ratio. Thus the

measurement of minor mineral consumed from the land is in solid volume of the unprocessed mineral for which only seigniorage is applicable which is collected by the Mines Department before it is taken out of leased premises.

130. It is stated that from the above proposition it can be seen that the volume of a large stones measured one cum when converted into small stones and stacked would measure upto 1.82 cum due to voids occurring between the small stones. Now, if the stones of one cum solid volume is weighed and compared with the weight of the total quantity of (1.82) of small stones manufactured from this both would be identical. In other words, the inflated volume of small stones is a mere illusion as established by weighment method since voids are mere empty spaces, which had no weight.

131. It is also stated that in spite of bringing these facts to the notice the Assistant Director of Mines and Geology, by force and by coercion the authorities are demanding from the petitioner to pay seigniorage fee on the basis of volume of processed material transported when the petitioner paid seigniorage fee for the quantity of rough stone already. No notice was given in writing to that effect, but the vehicles are not permitted to move without payment of the seigniorage fee for the second time.

132. It is further stated that as per the scheme of the Act and the Rules, quarry leases are granted and the excavated stones are allowed to be taken out of the leased premises only on payment of royalty/seigniorage fee as fixed and the minor mineral from the quarry site is transported on the authority of permits granted by the mines department. Whatever may be right of the Government initially over the underground minerals once the lease was granted royalty/seigniorage fee is paid by the leaseholder to the Government and the mineral extracted is taken out of the leased premises on valid permits granted by the mines department, the ownership of the mineral extracted passes on from the Government to leaseholder and for all purposes the petitioner will be deemed to be the owner. Once the leaseholder becomes owner of the property any control or interference not provided for in the Act or Rules amounts to violation and no power is conferred on State Government under the Act to exercise control over minor minerals after they have been excavated and royalty/seigniorage paid for the material so consumed from the land.

133. It is also stated that royalty or seigniorage fee had to be assessed on the basis of solid volume of the excavated mineral, but not on the basis of material supplied to end user. Royalty is payable by the lessee on unprocessed mineral to the State and not on the quantity of processed mineral. Any assessment basing on the volume supplied and demanding seigniorage fee on the basis of the mineral which had suffered seigniorage fee at the basic point is arbitrary and illegal.

134. It is also averred that in spite of bringing to the notice of the authorities the fact of changes in volumes due to voids the respondents had been demanding the seigniorage fee on such finished product viz., ballast. The action was arbitrary, illegal, unjust, unconstitutional and contrary to rules. The seigniorage fee had to be paid as per Rule 10 and not on the crushed material supplied to railways or sold. The removal of material from the quarries was done on the authority of the dispatch permits issued by the Assistant Director of Mines and Geology and also transit permits issued by Assistant Director under the Rules after collecting the seigniorage charges. The petitioner had not indulged in any illegal activity. In spite of this, the Assistant Director of Mines and Geology had advised the railways to deduct seigniorage fee/royalty from the running bills on the finished product i.e., ballast measured on volumetric basis. In spite of production of proof of payment of seigniorage fee on rough stone, the railways had been insisting on deducting seigniorage fee on the finished product on the advice of the Assistant Director and Deputy Director of Mines and Geology.

135. It is stated that it was also brought to the notice of the department that technical references relating to changes in volumes etc., are very much relevant and had to be agreed to at any stage. It was also brought to the notice that the lease deed and agreement between the department and the petitioner are not in conflict with the Rules. The technical reference made by the petitioner will be held with the department to implement the rules. Quantity of metal as supplied to railways cannot be taken into account and only the solid volume of stone/boulders removed from the quarry in terms of Rules had to be taken into account for assessing the seigniorage fee. But the respondents did not pay any heed and are proceeding with the collection of seigniorage fee in terms of measurement of processed material and interfering with the transportation. The Assistant Director cannot demand the seigniorage fee on the finished product where the mineral had already suffered seigniorage fee nor the South Central Railway can deduct the seigniorage fee from the running bills on the finished product (ballast) basing on volumetric analysis. Unless this Court intervenes and issues appropriate directions the petitioner will suffer great hardship and irreparable loss. It is submitted under similar circumstances this Court had clarified and passed orders in W.P.No.24997 of 2001 that “Collection of Seigniorage fee on the basis of volumetric analysis on condition of petitioner producing proof of seigniorage fee already paid on the boulders quarried on the premises. In respect of which it had been granted a quarry lease”. The said writ petition is pending along with batch. As the petitioner had entered into agreements after 2001 the authorities are deducting seigniorage fee basing on volumetric analysis that there is no similar order for the present agreements and the latest quarry leases.

136. The aforesaid are the respective stands taken by the parties. Technical Study Report on Volumetric and Tonnage Variation due to crushing of stones and boulders by department of Mines and Geology, Government of Andhra Pradesh, Hyderabad, had been placed before this Court and several mathematical and arithmetical calculations had been put forth by the learned Government Pleader for Industries and Commerce.

137. In the light of the stand taken by the parties, the question to be answered is whether the writ petitioners are entitled to the relief prayed for in their respective writ petitions. The factual matrix as reflected from the respective pleadings of the parties and also the material placed before the Court need not be further explained. Act No.67/57, in short the Act, is an Act to provide for the development and regulation of Mines and Minerals under the control of the union. Section 9 of the Act deals with Royalties in respect of mining lease reads as hereunder:

> "**Royalties in respect of mining leases**:- (1) The holder of a mining lease granted before the commencement of this Act shall notwithstanding anything contained in instrument of lease or in any law in force at such commencement, pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of the mineral.
>
> (2) The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral.
>
> (2-A) The holder of a mining lease, whether granted before or after commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, (56 of 1972) shall not be liable to pay any royalty in respect of any coal consumed by a workman engaged in a colliery provided that such consumption by the workman does not exceed one-third of a tonne per month.
>
> (3) The Central Government may, by notification in the Official Gazette, amend the Second Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification.
>
> Provided that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of (three years)."

138. Section 13 of the Act deals with Power of Central Government to make rules in respect of minerals. The Mineral Concession Rules, 1960 were made in exercise of powers conferred under Section 13 of the Act by the Central Government and Rule 64(b) deals with charging of royalty in case of minerals subjected to processing reads as hereunder:

> "**Charging of Royalty in case of minerals subjected to processing:-**
> (1) In case processing of run-of-mine mineral is carried out within the leased area, then, royalty shall be chargeable on the processed mineral removed from the leased area.
>
> (2) In case run-of-mine mineral is removed from the leased area to a processing plant which is located outside the leased area, then, royalty shall be

chargeable on the unprocessed run-of-mine mineral and not on the processed product."

139. It is no doubt true that this rule is not applicable to the present batch of writ petitions. Section 15 of the Act deals with power of State Governments to make rules in respect of minor minerals. Rules 1966 were made in exercise of powers conferred under sub-section (1) of Section 15 of the Act. Rule 10 of the Rules deals with seigniorage fee or dead rent, which reads as hereunder:

"**Seigniorage fee or dead rent**:- (1) When a quarry lease is granted under these rules, the seigniorage fee or dead rent whichever is higher, shall be charged on all minor minerals dispatched or consumed from the land at the rate specified in Schedule I and Schedule II as the case may be.

(2) When quarry lease is granted, the assessment on the land together with the seigniorage fee or dead rent, whichever is higher, shall also be charged.

(3) When the quarry lease is granted -

(a) the dead rent for the 1st year shall be paid by the lessee at the time of execution of lease deed and for the subsequent years, every year in advance.

(b) the seigniorage fee shall be paid before the mineral is removed from the leased area.

(4)(a) Notwithstanding anything contained in sub-rules (2) and (3) every quarry lease holder including temporary permit holder except the person/organizations who obtained quarry lease with exemption from payment of seigniorage fee for the specified minerals in the sector shall pay the seigniorage fee to the successful Tenderer, bidder (hereinafter referred to as authorized Agent) as per the relevant rates in Schedule 1 to Rule 10 in force as on the day of notification of the auction notice. All the quarry lease holders for the specified Minor Minerals are deemed to have come under this provision for the payment of seigniorage fee from the date, the authorized Agent makes agreement in Form-M for the concerned Sector.

(b) When the quarry leases are granted under Rule 12 for the specified Minor Minerals, seigniorage fee or dead rent whichever is higher shall be charged on such minerals dispatched or consumed from the land at the relevant rates specified in Schedule I and Schedule II along with the land assessment on the assessment made by the Assistant Director concerned. Every lessee who has been granted leases for specified Minor Minerals under aforesaid provisions shall submit the detailed accounts as required by the Assistant Director concerned for the purpose of making annual assessment for the Mineral Revenue before 10th of April every year. The Authorized Agent does not have any claim on the dead rent, if any, fallen due from the lessees on annual assessment made by the Assistant Director concerned.

(c) The additional amount of seigniorage fee over and above the rates in force as on the day of notification of auction notice due to revision of rates of seigniorage fee made from time to time shall be paid by the lessees directly to the Government and the authorized agent shall not have any claim for such payments.

(d) In respect of specified Minor Minerals, the Assistant Director may grant temporary permits for limited quantities and for limited period over the specified areas to meet immediate and timely requirement and the payment of seigniorage fee on such temporary permits shall be made to the Authorised Agent.

(e) In case, the right of collection of seigniorage fee is not disposed off in Sealed Tender cum Public Auction or even if it is disposed off but the authorized Agent does not perform due to any reason, the Sectors are deemed to have not been notified for public Auction and the collection of seigniorage fee and

dead rent shall be made as per sub-rule (1) of Rule 10."

140. Schedules I and II under Rule 10 as substituted by G.O.Ms.No.217, dated 29.09.2004, read as hereunder:

"SCHEDULE – I
RATES OF SEIGNIORAGE FEE

Sl. No.	Name of the Minor Mineral	Unit	Rate of seigniorage fee (in rupees)
1.	Building Stone	M3/MT	Rs.45/30 (Rupees Forty five/thirty)
2.	Rough Stone/Boulders	M3/MT	Rs.45/30 (Rupees Forty five/thirty)
3.	Road Metal & Ballast	M3/MT	Rs.45/30 (Rupees Forty five/thirty)
3(a)	Dimensional Stone used for Kerbs & Cubes	MT	Rs.80 (Rupees eighty)
4.	Limekankar/Limestone Limestone (L.D. Grade) 2nd Mines and Act, 1957	MT	The rate of Royalty as applicable to (other than in respect of Major Mineral as per the Schedule of the Minerals (D&R)
5.	Limeshell	MT	Rs.80 (Rupees Eighty)
6.	Marble	M3/MT	Rs.150/60 (Rupees one hundred & fifty/sixty)
7.	Mosaic Chips	MT	Rs.40 (Rupees Forty)
8.	Muram/Gravel & Ordinary earth	M3/MT	Rs.20/12 (Rupees twenty/twelve)
9.	Ordinary Sand/Sand manufactured from boulders useful for Civil Construction	M3	Rs.36 (Rupees Thirty Six)
10.	Shingle	M3	Rs.15 (Rupees fifteen)
11.	Chalcedony Pebbles	MT	Rs.30 (Rupees Thirty)
12.	Fuller's Earth/Bentonite	MT	Rs.100 (Rupees Hundred)-White Rs.40 (Rupees Forty)-Off white
13.	Shale/Slate	MT	Rs.100 (Rupees hundred)
14.	Rehmati	M3	Rs.15 (Rupees Fifteen)
15.	Limestone Slabs (a)(i) Colour (a)(ii) White (b) Black		Rs.6 (Rupees Six) Sq.Mt. or Rs.80 (Rupees eighty) per MT., whichever is higher. Rs.4 (Rupees Four) per Sq.Mt. or Rs.50 (Rupees Fifty) per MT., whichever is higher. Rs.3 (Rupees three) per Sq.Mt. or Rs.40 (Rupees Forty) per MT., whichever is higher.
16.	Ordinary Clay, Silt and Brick Earth used in the manufacture of bricks including Mangalore Tiles		Rs.3500 (Rupees Three thousand and five hundred) per kiln per annum for Bricks & Tiles

(Rate per Cubic Metre)

17.	Granite useful For cutting &	More than 270 Cms x 150 cms polishing	Below 270 Cm x 150 Size	Below 75 Cm size Cm size
(a)	Black Granite Galaxy Variety	Rs.3000 (Rupees three thousand)	Rs.2250 (Rupees Two thousand two hundred & fifty)	Rs.1000 (Rupees one thousand)
(b)	Black Granite other than Galaxy variety	Rs.2250 (Rupees two thousand two hundred & fifty)	Rs.1750 (Rupees one thousand seven hundred and fifty)	Rs.750 (Rupees Seven hundred and fifty)
(c)	Colour Granite of Srikakulam Blue, Indian Aurora of Nizamabad Dist., Leptinites of Coastal Dists., Black Pearl of Prakasam & Guntur Dist.	Rs.2250 (Rupees two thousand two hundred and fifty)	Rs.1750 (Rupees one thousand seven hundred and fifty)	Rs.750 (Rupees seven hundred and fifty)
(d)	Colour Granite of other varieties	Rs.1750 (Rupees one thousand seven hundred and fifty)	Rs.1500 (Rupees one thousand five hundred)	Rs.750 (Rupees seven hundred and fifty)

SCHEDULE – II
RATE OF DEAD RENT

Sl. No.	Name of Minor Mineral	Rate of Dead Rent per hectare per Annum
1.	Black Granite	Rs.50,000 (Rupees fifty thousand)
2.	Colour Granite	Rs.40,000 (Rupees forty thousand)
3.	Limestone other than classified as minerals used for lime burning for building construction purposes, Marble, Boulders, Building Stone including stone used for Road Metal, ballast Concrete and other Construction purposes, shale, slate and Phyllites, Mosaic Chips, Fuller's Earth, Bentonite & Dimensional Stones used for Cubes & Kerbs.	Rs.25,000 (Rupees major twenty five thousand)
4.	Gravel, Morrum, Shigle, Limestone Slabs used for Flooring purposes Limekankar Chalcedeny, Pebbles used in the building purposes limeshell for burning used for building purposes and Rehmatti.	Rs.15,000 (Rupees Fifteen thousand)

3. This order issues with the concurrence of Finance Department vide their U.O.No.4025/PFS/2004, dated 20.09.2004.

4. This order shall come into force with effect from 01.10.2004."

141. Rule 26 of the Rules deals with penalty for unauthorized quarrying. Rule 28 deals

with Discovery of new mineral, fencing, accounting etc., and Rule 28 (3) of the Rules specifies for the lessee or the person to whom a permit is given shall keep true accounts of the quantity and other particulars of all minor minerals obtained and dispatched from the quarry in Form-C.

142. Rule 34 of the Rules dealing with Despatch permit reads as hereunder:

> "**Despatch permit**:- (1) No minor mineral shall be dispatched from any of the leased areas without a valid permit issued by the Assistant Director concerned or an Officer authorized by him in this behalf. Contravention of this rule shall result in forfeiture of Security Deposit and levy of normal seigniorage fee along with five times penalty by the said Assistant Director or the Officer authorized by him.
>
> (2) The application for the dispatch permit under sub-rule (1) shall be made by the lessee to the Assistant Director concerned in Form-K by duly enclosing challans towards advance payment of seigniorage fee for the proposed quantity to be dispatched at least ten days before the proposed date of dispatch of the mineral. The permit shall be issued by the competent authority in Form-L."

143. The A.P. Mineral Dealers Rules 2000 under G.O.Ms.No.537, I&C (M-1), dated 11.01.2000 were made in exercise of powers conferred by Section 23(c) of the Act and Rule 6 deals with Transit pass, which reads as hereunder:

> "**Transit Pass**:- (1) No person shall transport or otherwise remove or carry away any mineral from any place without obtaining a transit pass from the Assistant Director of Mines & Geology or the Assistant Geologist concerned in the absence of Assistant Director of Mines & Geology concerned. Persons desiring such passes should file an application before the Deputy Director of Mines & Geology in Form-E duly specifying all the particulars prescribed therein.
>
> (2) The application shall be accompanied by a copy of the permit showing payment of royalty/seigniorage on such mineral or other adequate proof of such payment.
>
> (3) On receipt of an application under sub-rule (1), the Assistant Director of Mines & Geology or the Assistant Geologist concerned in the absence of Assistant Director of Mines & Geology may grant Transit Pass in Form-G for such period and subject to such terms and conditions as prescribed by him or may refuse to grant Transit Pass for reasons to be recorded in writing and communicated to the applicant.
>
> (4) Any person who transports the mineral and who is required to carry Transit Pass shall on demand produce such pass to any officer authorized in this behalf."

144. Rule 8 dealing with penalities, reads as hereunder:

> "**Penalties**:- (1) Any person who contravenes any of the provisions of these rules, or buys or sells or stores minerals except under and in accordance with the dealer's registration or who transports the minerals except in this transit pass shall be punishable with a fine of:
>
> (a) Rs.10,000/- if the offence is committed first time.
>
> (b) In the event of repeated offence, Rs.25,000/- or imprisonment for a term which may extend to one year or with both.
>
> (2) Any person who buys or sells minerals except under and in accordance with the registration shall be punishable with a fine which may extend to Rs.25,000/- or imprisonment for a term which may extent to one year or with both.

(3) Any person who transports minerals except to the destination specified in transit pass or permit shall be punishable with imprisonment for one year or fine which may extend to Rs.25,000/- or with both.

(4) Whoever intentionally obstructs the competent authority or any other officer in performing his duties (is imposing penalties etc.,) under these rules shall be punishable with an imprisonment for a term which may extend to 6 months or fine which may extend to Rs.10,000/- or with both."

145. In certain counter-affidavits the grounds of alternative remedy and other like grounds had also been taken.

146. In ***STATE OF ORISSA & OTHERS vs STEEL AUTHORITYOF INDIA LIMITED***[1], the Apex Court while dealing with mode of categorization of royalty in the context of Section 9(1) of the Act, it was observed at paras 8, 10, 11, 12 and 13 of the judgment as hereunder:

"The learned counsel appearing for the appellants submitted that the High Court was not right in making the distinction and concluding that the quantity of minerals which had undergone certain process alone was liable to levy of royalty. According to the learned counsel, this view runs counter to the view already taken by another Division Bench of the same High Court in O.J.C. No. 909/74. The further case of the learned counsel was that the judgment in O. J. C. 909/74 was taken on appeal on this Court by the aggrieved assessee in Civil Appeal No. 807/76 [National Coal Development Corporation Ltd. v. State of Orissa] and this Court approved the view taken by the High Court and dismissed the said Civil Appeal No. 5-12-91. Learned counsel, in support of his argument, placed reliance on the judgments of this Court, namely, India Cement Ltd. v. State of Tamil Nadu, (1990) 1 SCC 12 : (AIR 1990 SC 85) and Saurashtra Cement and Chemical Industries Ltd. v. Union of India, (1994) 1 SCC 226. Learned counsel appearing for the respondent-assessee supported the judgments under appeal on the basis of the distinction made by the High Court.

Section 9(1) of the Act reads as follows :-

"The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any mineral removed or consumed by him or his agent, manager, employee, contractor or sub-lessee from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral."

It is to be noted that the levy of royalty is in respect of minerals removed or consumed by the contractor from the leased area. We have seen earlier the process that the mineral said to undergo before the same was removed from leased area. Section 9 (1) of the Act also contemplates the levy of royalty on the mineral consumed by the holder of a mining lease in the leased area. If that be so, the case of the appellants that such processing amounts to consumption and, therefore, the entire mineral is exigible to levy of royalty has to be accepted. We are unable to agree with the distinction made by the High Court and the conclusion that the royalty can be levied only on the quantity of mineral obtained after processing.

Another Division Bench of the Orissa High Court in National Coal Development Corporation case (supra), while considering the question whether the coal extracted by the workmen for their own domestic consumption is exigible to levy of royalty, accepting the contention of the Revenue, held "that removal from the seam in the mine and extracting the same through the pit's mouth to the surface satisfy the requirement of Section 9 in order to give rise to liability for royalty". This view of the High Court found approval by this Court in Civil Appeal No. 807/76 and this Court held that the lessee in that case was liable to pay royalty for the coal supplied to its workmen for consumption.

In India Cement's case (AIR 1990 SC 85) (supra) a Constitution Bench, while considering the constitutionality of levy of cess on the royalty, held as follows (at Pp. 93-94 of AIR) :-

> "In the Western India Theatres Ltd. v. Cantonment Board, Poona Cantonment (AIR 1959 SC 582) it was held that an entertainment tax is dependent upon whether there would or would not be a show in the cinema house. If there is no show, there is no tax. It cannot be a tax on profession or calling. Professional tax does not depend on the exercise of one's profession but only concerns itself with the right to practice. It appears that in the instant case also no tax can be levied or is leviable under the impugned Act if no mining activities are carried on. Hence, it is manifest that it is not related to land as a unit which is the only method of valuation of land under Entry 49 of List II, but is relatable to minerals extracted. Royalty is payable on a proportion of the minerals extracted."

147. In ***STATE OF TAMIL NADU vs M.P.P. KAVERY CHETTY***[2] the Apex Court while dealing with Tamil Nadu Mines and Minerals Rules 1959, Rule 19-A first proviso and Rules 8-D and 19-B of the Rules observed in paras 7, 15, 22 and 24 as hereunder:

> "Learned counsel for the appellant-State drew our attention to the judgment of this Court in State of Tamil Nadu v. Hind Stone, (1981) 2 SCR 742 : (AIR 1981 SC 711). The High Court of Madras had struck down Rule 8C of the said Rules as it then read. Rule 8C stated that on and from 2nd December, 1977, no lease for quarrying black granite would be granted to private persons and that the State Government itself could engage in quarrying black granite or grant leases for quarrying black granite in favour of any State Government Corporation. This Court referred to the declaration made under Section 2 of the said Act, which states that "it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals" to the extent provided in the said Act. The public interest, this Court said, which induced Parliament to make this declaration had to be the paramount consideration in all matters concerning the regulation of mines and the development of minerals. Parliament's policy was clearly discernible from provisions of the said Act. It was the conservation and the prudent and discriminating exploitation of minerals with a view to secure maximum benefit to the community. There were clear signposts to lead and guide the subordinate legislating authority in the matter of making rules. It could not be said, having regard to the provisions of the said Act, that the rule making authority had exceeded its power in banning leases for quarrying black granite in favour of private parties and in stipulating that the State Government itself could engage in quarrying black granite or grant leases for quarrying black granite in favour of any State Government corporation. To view such a rule as a rule to benefit the State Government, the subordinate legislating body, was to take too narrow a view of its functions. If in the pursuit of the avowed policy of the Act it was thought that exploitation by the public sector was best and wisest in the case of a particular mineral, the authority competent to make the subordinate legislation could make a rule banning private exploitation of such mineral, which had hitherto been permitted. In the case of a scarce mineral the most effective method of conservation and prudent exploitation was to permit exploitation by the State or its agencies and to prohibit exploitation by private agencies. "If", the Court said, "you want to conserve in the future you must prohibit in the present. We have no doubt that the prohibiting of leases in certain cases is part of the regulation contemplated by Section 15 of the Act."

The provisions of Section 17A(2) of the said Act were adverted to and it was submitted that they were being circumvented by the first proviso of Rule 19A. Section 17A(2) reads thus:

> "The State Government may, with the approval of the Central Government, reserve any area not already held under any prospecting licence or mining lease, for undertaking prospecting or mining operations through a Government company or corporation owned or controlled by it or by the Central Government and where it proposes to do so, it shall, by notification in the Official Gazette, specify the boundaries of such area and

the mineral or minerals in respect of which such areas will be reserved."

Section 17A(2) applies when an area is sought to be reserved by the State Government for undertaking mining operations exclusively through a Government company or corporation. When such area is notified the mineral or minerals in respect of which it is notified must also be stated. Such reservation cannot be made without the approval of the Central Government. The first proviso of Rule 19A does not wholly exclude private parties from obtaining quarrying leases for the minerals specified therein. It states that for such leases preference shall be given to State Government, companies and corporations. Where, therefore, there are, for the same mining lease for the specified minerals, rival applications, all things being equal having regard to the requirements of Rule 3 and of the form at Appendix X, a State Government company or corporation is to be preferred. The first proviso to Rule 19A cannot, therefore, be said to circumvent the provisions of S. 17A(2).

Rules 8D and 19B empowers the State Government or its Officers or a State Government company or corporation as the State Government may direct to control the sale by every permit-holder of quarried granite or other rock suitable for ornamental or decorative purposes. They also empower the State Government or its Officers or a State Government company or corporation, as the case may be, to fix the minimum price for the sale thereof. The object, as is shown by the terms of Government Order No. 214 dated 10th June, 1992, quoted above, is to conserve and protect granite resources.

There is no power conferred upon the State Government under the said Act to exercise control over minor minerals after they have been excavated. The power of the State Government, as the subordinate rule making authority, is restricted in the manner set out in S. 15. The power to control the sale and the sale price of a minor mineral is not covered by the terms of clause (o) of sub-sec. (1A) of S. 15. This clause can relate only to the regulation of the grant of quarry and mining leases and other mineral concessions and it does not confer the power to regulate the sale of already mined minerals."

148. In ***Dr. B. SANJEEVA REDDY & OTHERS vs ASSISTANT DIRECTOR OF MINES & GEOLOGY, KURNOOL & OTHERS***[3] a Division Bench of this Court at paras 11, 12 and 14 observed as follows:

"The aforesaid communication shows that the grade of steatite is determined with reference to its percentage of brightness and secondly it indicates that the mineral with less than 78% brightness should be classified as 'insecticide grade'. In the face of the classification made by an expert statutory body whose opinion is entitled to great weight, it is not open to the respondents to contend that the question whether the mineral is of insecticide grade or non-insecticide grade is incapable of being ascertained on the basis of examination of mineral. Nor can it be said that it is only on the basis of consumption by a particular industry that the grade could be determined.

From the factum of sale to paper industry alone it cannot be inferred that the mineral is not of insecticide grade. It may be that mineral of lesser brightness and inferior quality is also used by paper industry at times though, normally it is not meant to be used. The respondents have not placed any material before us to show that insecticide grade steatite having brightness of say, 70 to 75% is wholly unfit for use by paper industry. Incidentally, we may point out that it is not the case of the respondents that a superior quality mineral is being passed off as inferior quality furnishing wrong information as regards the percentage of brightness. If there is any such allegation, it could only emerge as a result of technical analysis. The fact that mineral was sold to paper industry may, at best furnish corroborative evidence that the mineral had, in fact, higher percentage of brightness i.e., 78% and above. When once the results of technical analysis is reinforced by the evidence of its disposal is present, it cannot be said beyond doubt that such mineral had no claim to be treated as insecticide grade. But what we would like to stress is that the approach of the 1st respondent that the grade of

> the mineral in question has to be judged solely and merely on the basis of its end-user but not on the basis of the qualitative analysis and classification is liable to be faulted, viewed from any angle.
>
> Section 9 read with the condition of lease prescribed by the G.O. above cited, thus, makes it clear that the royalty is payable before the removal of mineral from the leased area. It is only on the payment of royalty that the mineral is permitted to be transported outside the mine site. It is therefore, implicit that the measure of levy that is to say, the quantum of royalty is determinable at the point of time before it is removed out of the leased area. At that point of time, the assessing authority must be able to tell precisely as to what is the amount of royalty payable. The quantum of royalty cannot be made to depend on the subsequent event of sale or user. A sale may or may not take place by the time the mineral is removed from the leased area. For instance, let us take a case where a lessee wants to take the mineral to his stocking point or godown and then sell it at his convenience at a later date. Nothing in the Act or the rules prevents such course. In such an event, no assessment can possibly be made on the assumption that the ore will be ultimately sold to a paper industry or a paint industry or a cosmetic industry and so on. The royalty payable has to be quantified and collected on the basis of the facts obtaining at the point of removal from the mine site. If the mineral is moved out without reference to a sale contract, the end user test cannot be adopted and the authorities concerned will not be able to fix the quantum of royalty. This will lead to uncertainty and lack of uniformity in incidence."

149. In ***NATIONAL MINERAL DEVELOPMENT CORPORATION LMITED vs STATE OF M.P. & ANOTHER***[4] the Apex Court while dealing with Section 9 of the Act and Schedule II and levy of royalty thereunder and principles to be followed at paras 23, 24 observed as hereunder:

> "Section 9 is not the beginning and end of the levy of royalty. The royalty has to be quantified for purpose of levy and that cannot be done unless the provisions of the Second Schedule are taken into consideration. For the purpose of levying any charge, not only has the charge to be authorized by law, it has also to be computed. The charging provision and the computation provision may be found at one place or at two different places depending on the draftsman's art of drafting and methodology employed. In the latter case, the charging provision and the computation provision, though placed in two parts of the enactment, shall have to be read together as constituting one integrated provision. The charging provision and the computation provision do differ qualitatively. In case of conflict, the doubt or ambiguity the computing provision shall be so interpreted as to act in aid of charging provision. If the two can be read together homogeneously then both shall be given effect to, more so, when it is clear from the computation provision that it is meant to supplement the charging provision and is, on its own, a substantive provision in the sense that but for the computation provision the charging provision alone would not work. The computing provision cannot be treated as mere surplus age or of no significance; what necessarily flows therefrom shall also have to be given effect to.
>
> Applying the abovestated principle, it is clear that Section 9 neither prescribed the rate of royalty nor does it lay down how the royalty shall be computed. The rate of royalty and its computation methodology are to be found in the Second Schedule and therefore the reading of Section 9 which authorizes charging of royalty cannot be complete unless what is specified in the Second Schedule is also read as part and parcel of Section 9."

150. As can be seen from the respective stands taken by the parties, the controversy boils down to the mode of charging and further computation thereof. It is needless to say that whether the charging provision and computation provision are at one place or not, they have to be constituted as one integrated provision. It is needless to say that the

parties are bound by the terms and conditions specified in the lease deeds and it is needless to say that even the lease deeds to be in accordance with the rules governing the field. Strong reliance was placed in G.O.Ms.No.217 and the changes introduced in the schedules in pursuance thereof.

151. Learned counsel for the petitioners contended that this will not alter the situation and the learned Government Pleader for Industries and Commerce contended otherwise.

152. Strong reliance was placed on the Technical Study Report on volumetric and Tonnage Variation due to crushing of stones and boulders. While charging and computing, this Court is of the considered opinion that the respondents are bound to follow the provisions of the Act and the Rules made thereunder and it is needless to say that the Schedules under Rule 10 of the Rules also may have to be followed as amended by G.O.Ms.No.217, dated 29.09.2004 referred to supra.

153. The parties are not at controversy or in variation as far as this fundamental principle is concerned, but how to calculate and how to compute and where the same should begin and end, these aspects appear to be the controversial area whereunder the stand of the Government is that by improper calculation or miscalculation the petitioners are trying to escape their liability and on the contrary the petitioners are taking a stand that they are bound by the charging provision and the rates as specified in the schedules and nothing more and nothing beyond. It is needless to say that while interpreting a charging provision or a computation provision normally the same to be strictly construed since it would be fastening the liability and in the event of doubt, the State Government is always at liberty to bring in suitable amendments for the relevant rules.

154. On a careful scrutiny of G.O.Ms.No.217 referred to supra and also the Rules governing the field, as far as its position is concerned, this Court is satisfied that except for certain variations introduced as far as the basic charging and computation are concerned, there is no substantial change or variation. Though the decisions of the Apex Court referred to supra and also of the Division Bench specified above, are delivered in slightly different contexts, the principle laid down in substance is applicable to the present batch of writ petitions.

155. It is made clear that the respondents are bound to charge and compute in accordance with the provisions of the Act and the Rules governing the field and no doubt the petitioners are bound by the terms and conditions of the respective leases. In any event, the arithmetical or mathematical calculations or the other details worked out by the respondents that too without notice to the affected parties may not be of much relevance in deciding the present batch of writ petitions.

156. Hence, in the light of the above clarification that the parties to these writ petitions are bound to follow the provisions of the Act, the Rules governing the field relating to the charging and computation of the amounts in controversy, and since there cannot be any deviation therefrom, the writ petitioners are bound to succeed and accordingly, the writ petitions are hereby allowed to the extent indicated above. No order as to costs.

157. Before parting these cases, it is made clear that the State Government is at liberty to take appropriate steps to make suitable amendments to the concerned Rules, if it is so advised.

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P.S. NARAYANA, J

Date: -09-2006
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[1] (1998) 6 SCC 476
[2] AIR 1995 SC 858
[3] 1996 (1) ALD 198 (D.B.)
[4] (2004) 6 SCC 281